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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS, EX REL. ROBERT L. GORDON, DIRECTOR OF LABOR, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED JANUARY 14, 1946.

CERTIORARI GRANTED FEBRUARY 25, 1946.

SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE STATE OF ILLINOIS

APPEAL, CIRCUIT COURT, COOK COUNTY

42C 1555

43C 3428

No. 28490

WILLIAM FISHER, Trustee for the Benefit of Creditors of Advertising Review Publishing Co., a corporation, Plaintiff below in cause General No. 42C 1555.

PEOPLE ex rel. FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Appellee,

vs.

CARTER H. HARRISON, etc., et al., and ADVERTISING REVIEW PUBLISHING COMPANY, a Corporation,

ON APPEAL OF UNITED STATES OF AMERICA, Appellant

[fol. 5] **Abstract of Record from Circuit Court of Cook County**—Filed November 27, 1944

COMPLAINT—Filed February 11, 1942

Complaint filed on the 11th day of February, A. D. 1942, alleges:

1. On January 9, 1939, the Advertising Review Publishing Co., a corporation theretofore doing business in the [fol. 6] City of Chicago, at 605 Michigan Avenue in said city did sell, assign, transfer and set over to the plaintiff William Fisher, as Trustee, all of its right, title and interest in and to the assets of the said Advertising Review Publishing Co. for the benefit of its creditors.

2. Since said date the plaintiff William Fisher, as Trustee for the benefit of the creditors of the Advertising Review Publishing Co. has diligently sought to reduce the assets

so set over, transferred and assigned to him into cash, and the said William Fisher has realized from the assets of said estate the sum of $1,734.40; that during the two years of his administration of said estate there have been charged against said assets an aggregate amount of costs of administration totaling $481.29. The plaintiff now holds as Trustee for the benefit of the creditors of the said Advertising Review Publishing Co. the sum of $1,253.11; that there are no further assets of said Advertising Review Publishing Co. which have come to the knowledge or attention of this plaintiff and this plaintiff state upon information and belief that the sum which he holds as aforesaid constitutes all of the assets of said corporation.

3. That the defendant Carter H. Harrison, Collector of Internal Revenue has filed with the plaintiff claims for taxes as follows:

Capital stock tax for the year 1939, tax $47.23, penalty $11.50. Total $58.73 on which the said defendant claims interest at the rate of 6% per annum.

Social Security Title IX for the year 1938, tax $1,038.56, penalty $245.80, total $1,284.36 plus interest at the rate of 6% per annum from January 11, 1940.

[fol. 7] Social Security Title VIII for the taxable period ending October, 1937, tax $12.87, penalty $2.86 with interest from January 6, 1940, at 6% per annum.

Social Security Title VIII for the taxable period ending November, 1937, tax $39.72, penalty $8.87 with interest from January 6, 1940, at 6% per annum.

Social Security Title VIII for the taxable period ending December, 1937, tax $105.02, penalty $23.56 with interest from January 6, 1940, at 6% per annum.

Social Security Title VIII for the taxable period ending March 31, 1938, tax $253.41, penalty $57.61 with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending June 30, 1938, tax $178.66, penalty $41.18 with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending September 30, 1938, tax $152.63, penalty $35.68, with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending December 31, 1938, tax $124.04, penalty $29.41 with interest from January 6, 1940 at 6% per annum.

that the defendant Francis B. Murphy or his predecessor in office Martin P. Durkin as Director of Labor in the State of Illinois has filed with the plaintiff the claim of the Division of Unemployment Compensation of the Department of Labor of the State of Illinois its claim for contributions and interest due it in the sum of $721.29 with interest after January 25, 1939 at the rate of 1% per month.

4. The defendants herein have asserted various and conflicting claims of priority and have threatened to hold the [fol. 8] plaintiff liable for any sums distributed to the other defendant; and the plaintiff despite his diligence has been unable to determine how said sum should be distributed.

5. The plaintiff William Fisher as Trustee for the benefit of creditors of said Advertising Review Publishing Co. has always been and is now willing to pay the funds in his hands as such Trustee as aforesaid to or on account of any and all of the persons as shall be in law entitled to said funds. The plaintiff, William Fisher, as Trustee has investigated the validity of the foregoing described tax claims and states upon information and belief that the same are true and correct and he offers to bring the funds remaining in his hands as aforesaid into court and to pay said sum over to the defendants or such of them as the court may direct or in the alternative to pay said sums into the office of the Clerk of this Court to be distributed by him as the court may hereafter adjudge, order or decree.

6. That the plaintiff William Fisher as Trustee for the benefit of the creditors of Advertising Review Publishing Co. has required the service of counsel in preparing and filing this Complaint in Chancery for Interpleader and will require the further services of counsel to protect the interests of the plaintiff as Trustee for the benefit of the creditors of the said Advertising Review Publishing Co.; that for this purpose he has retained the firm of Goldberg and Weigle; the reasonable fees to which they may be entitled for the protection of the funds remaining in the hands of the plaintiff as aforesaid should be chargeable against said funds as part of the cost of administration of this estate.

[fol. 9] 7. The plaintiff William Fisher as Trustee for the benefit of creditors of the said Advertising Review Publishing Co. has in no way colluded with either or both of the

defendants nor has this bill of interpleader been filed at the request or instigation of either of said defendants but solely and entirely to permit the funds remaining in his hands as Trustee to be distributed to such person or persons as shall in law be entitled thereto and to prevent any possible surcharge against the plaintiff as Trustee.

Wherefore the plaintiff prays:

A. That the defendants and each of them set forth by their answers to this complaint the exact amounts to which they claim they are entitled and that they shall thereafter settle between them all of the issues and controversies arising out of the conflicting claim to priority in said funds.

B. That this court shall determine the reasonable attorneys fees to be allowed and paid to the attorneys for the plaintiff for the preparation, filing and prosecution of this bill of interpleader and shall order the plaintiff to pay to said attorneys such sum as shall thereby be allowed to them out of the remaining assets of the trust estate as a proper cost of administrator thereof.

C. That upon making payment as decreed by the court to the attorneys and to the defendants or either of them or to the Clerk of the Court for their benefit, thereupon the plaintiff William Fisher as Trustee for the benefit of creditors of the said Advertising Review Publishing Co. shall be discharged as Trustee and freed of any interest herein save only as a nominal plaintiff.

[fol. 10] MOTION OF FRANCIS B. MURPHY TO DISMISS

Motion of Francis B. Murphy, Director of Labor of the State of Illinois, to dismiss the suit wherein it is stated:

That it appears on the face of the complaint that the Court has not jurisdiction of the person of the co-defendant, Francis B. Murphy, Director of Labor of the State of Illinois.

ORDER ON STIPULATION AS TO PARTIES

Order on stipulation wherein it is ordered as follows:

1. The United States of America be added as an additional party defendant in the within cause.

2. Summons issued against The United States of America to be served upon The United States District Attorney for the Northern District of Illinois.

3. That paragraph 3 of the complaint heretofore filed herein be and the same is hereby amended on its face by adding after the third word of said paragraph the following:

"The United States of America acting by and through."

4. The defendant, Carter H. Harrison, Collector of Internal Revenue, be dismissed as a party defendant without costs.

5. The cause continue as to the defendants, The United States of America and Francis B. Murphy, Director of Labor of the State of Illinois.

6. The motion of the defendant, Francis B. Murphy, Director of Labor of the State of Illinois heretofore filed herein shall stand as his motion to the complaint amended as aforesaid; and

[fol. 11] 7. That this order shall be without prejudice, in any way, to the plaintiff, William Fisher, Trustee for the benefit of creditors of Advertising Review Publishing Co., a corporation.

ANSWER AND COUNTERCLAIM OF THE UNITED STATES

Answer and Counterclaim of the United States of America, defendant, wherein it is stated:

1. It admits the allegations in Paragraph 1 of the Complaint.

2. It admits the allegations of Paragraph 2 of the Complaint.

3. Answering Paragraph 3 of the Complaint defendant admits that portion of the Complaint which sets out in detail claims of Carter H. Harrison, Collector of Internal Revenue, as claims for taxes due the United States Government, and neither admits nor denies that part of the said paragraph which states that the defendant, Francis B. Murphy or his predecessor in office, Martin P. Durkin, as Director of Labor in the State of Illinois, filed a claim of the Division of Employment Compensation of the Department of Labor of the

State of Illinois for $721.29, but demands strict proof thereof.

4. Answering Paragraph 4 of said Complaint the defendant neither admits nor denies but demands strict proof thereof and further answering counterclaims that under and by virtue of Section 3466 of the United States Revised Statutes, defendant is entitled to priority of allowance and payment of its claim over and above any and all creditors with the exception of costs of administration.

5. Answering Paragraph 5 of said complaint, the defendant neither admits nor denies the allegations therein con- [fol. 12] tained but again affirmatively pleads Section 3466 of the United States Revised Statutes as set forth in Paragraph 4 of this Answer.

6. Answering Paragraph 6 of said Complaint, defendant denies that any fee should be allowed to any counsel or attorney for the plaintiff herein for filing Complaint herein and further answering says that it is a well established rule of law in cases of Interpleader, that attorney fees for plaintiff's attorney are now allowable against the subject matter of the Interpleader.

7. Answering Paragraph 7 of the said Complaint defendant is not in a position to know the facts therein pleaded and demands strict proof thereof.

Answering subsection A of Paragraph 7 of said Complaint, defendant states that defendant is entitled to the following sums, to-wit:

Capital stock tax for the year 1939, tax $47.23, penalty $11.50. Total $58.73 on which the said defendant claims interest at the rate of 6% per annum.

Social Security Title IX for the year 1938, tax $1,038.56, penalty $245.80, total $1,284.36 plus interest at the rate of 6% per annum from January 11, 1940.

Social Security Title VIII for the taxable period ending October, 1937, tax $12.87, penalty $2.86 with interest from January 6, 1940, at 6% per annum.

Social Security Title VIII for the taxable period ending November, 1937, tax $39.72, penalty $8.87 with interest from January 6, 1940, at 6% per anuum.

Social Security Title VIII for the taxable period ending December, 1937, tax $105.02, penalty $23.56 with interest from January 6, 1940 at 6% per annum.

[fol. 13] Social Security Title VIII for the taxable period ending March 31, 1938, tax $253.41, penalty $57.61 with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending June 30, 1938, tax $178.66, penalty $41.18 with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending September 30, 1938, tax $152.63, penalty $35.68, with interest from January 6, 1940 at 6% per annum.

Social Security Title VIII for the taxable period ending December 31, 1938, tax $124.04, penalty $29.41 with interest from January 6, 1940 at 6% per annum.

Further answering subsection B of Paragraph 7 of the complaint, defendant denies that any attorney fees shall be allowed plaintiff for the preparation, filing and prosecution of the Bill of Interpleader.

Further answering subsection C of Paragraph 7 of the Complaint defendant admits allegations thereof.

Further answering subsection D of Paragraph 7 of the Complaint defendant denies that a permanent restraining order or injunction should be issued for the benefit of the trustee.

Wherefore, the United States of America, defendant in this said counterclaim prays:

(a) That the Court enter a decree denying to the Attorneys for the plaintiff herein, an attorney's fee for the preparation and filing of the said Complaint in Chancery for Interpleader;

[fol. 14] (b) That the Court enter a decree denying to the plaintiff an injunction against this defendant restraining the collection of any and all sums from the plaintiff as trustee for the benefit of creditors of the Advertising Review Publishing Co., a corporation, unless and until any and all sums due to this defendant first be paid and satisfied or in the alternative unless and until all sums now in the hands of the complainant be paid this defendant on account of the claims hereinbefore set forth;

(c) That the Court enter a decree in accordance with Section 3466 of the United States Revised Statutes ordering the plaintiff to pay over to the United States of America the sum of $1253.11, being the amount now in the hands of said Trustee as shown by said Bill of Complaint, immediately after payment of Costs of Administration and before payment to any creditors.

COMPLAINT IN EQUITY BY FRANCIS B. MURPHY FOR THE FORECLOSURE OF LIEN—Filed April 2, 1943

Complaint in Equity filed on the 2nd day of April, A. D. 1943, by Francis B. Murphy, Director of Labor for the State of Illinois for the foreclosure of lien and the appointment of a Receiver wherein it is alleged:

(1) That at all times hereinafter mentioned plaintiff herein was and is now a sovereign body politic.

(2) That Francis B. Murphy is the Director of Labor of the Department of Labor of the State of Illinois; that as such he is an officer of the State Government of the State of Illinois, provided for by the Civil Administrative Code, being "An Act in Relation to the Civil Administration of the State Government," approved March 7, 1917, as [fol. 15] amended; that the Director of Labor of the State of Illinois is the Administrator of the Illinois Unemployment Compensation Act, as amended, and that the aforementioned Francis B. Murphy is the duly appointed, confirmed, qualified and acting Director of Labor of the Department of Labor of the State of Illinois.

(3) That the defendant, Advertising Review Publishing Company, a corporation, had in its employ one or more individuals performing services for it in the State of Illinois, subsequent to June 30, 1937.

(4) That said defendant Advertising Review Publishing Company, a corporation, had in its employment eight or more individuals on some portion of a day within each of twenty or more calendar weeks in the year 1937.

(5) That in accordance with the Illinois Unemployment Compensation Act, as amended, there accrued and became payable by the defendant Advertising Review Publishing Company, a corporation, to the Director of Labor of the

State of Illinois, contributions in a sum equal to 1.8% with respect to wages payable for employment occurring during the calendar year 1937, 2.7% with respect to wages payable for employment occurring during the years 1938, 1939 and 1940, and 2.7% with respect to wages paid for employment occurring during the year 1941 and thereafter. That pursuant to Section 18(a)(3) of the aforesaid Illinois Unemployment Compensation Act, as amended, interest has accrued upon such contributions at the rate of 1 per cent per month from the respective dates upon which such contributions became payable.

[fol. 16] (6) That pursuant to the power vested in him by the Illinois Unemployment Compensation Act, the Director of Labor of the State of Illinois did on to-wit, the 30th day of October, 1937, adopt Regulation No. 2 as amended, which provides as follows:

> "(a) Contributions for the six consecutive months beginning July 1, 1937, shall become due, and be paid, on or before the last day of January, 1938. On and after January 1, 1938, contributions shall become due and shall be paid quarterly on or before the last day of the month next following the calendar quarter for which such contributions have accrued; except that any employer who is delinquent in filing a contribution report or in paying his contributions for any calendar quarter may be required to report and to pay contributions on a calendar month basis. (The calendar quarters above referred to are three-month periods ending March 31, June 30, September 30 and December 31.)"

(7) That in accordance with the provisions of Section 18 of the Illinois Unemployment Compensation Act, as amended, and Regulation No. 2 as adopted by the Director of Labor on October 30, 1937, effective October 30, 1937, as amended, it became the duty of the defendant Advertising Review Publishing Company, a corporation, to pay to the Director of Labor, contributions with respect to wages payable for employment occurring during the year 1937 on or before January 31, 1938, and for employment occurring in the year 1938 and thereafter, quarterly, on or before the last day of the month next following the calendar quarter for which contributions accrued.

(8) That the claim of the Director of Labor of the State of Illinois is admitted by the defendant Advertising Re- [fol. 17] view Publishing Company, a corporation; that said defendant has admitted its indebtedness for contributions to be as follows:

Period	Wages	Contribution	Interest	Penalties	Paid on Account	Balance Due
1st qtr. 1938	$7992.59	$215.80	$126.83	—	—	$342.63
2nd qtr. 1938	6279.54	169.55	94.66	—	—	264.21
3rd qtr. 1938	5966.68	161.10	85.01	—	—	240.11
4th qtr. 1938	4994.38	134.85	67.11	—	—	201.96
						$1054.91

(9) That the liability for such contributions and the amount thereof is based upon reports filed by the defendant Advertising Review Publishing Company, a corporation.

(10) That demand for payment of said delinquent contributions, together with interest thereon at the rate of 1 per cent per month from the respective dates upon which said contributions were payable, and for the payment of the penalties due for failure to file contribution reports as above set forth, has been made upon the defendant, Advertising Review Publishing Company, a corporation, by the Director of Labor of the State of Illinois, but no part of said delinquent contributions or interest has been paid by the defendant Advertising Review Publishing Company, a corporation, or by anyone on its behalf; and said indebtedness is still a valid and subsisting obligation due and owing by the defendant Advertising Review Publishing Company, a corporation, to the Director of Labor of the State of Illinois.

[fol. 18] (11) That pursuant to Section 26 of the Illinois Unemployment Compensation Act, as amended which provides as follows:

> "(a) A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time

due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become due. In all cases where a report setting forth the amount of such contributions has been filed with the Director, no action to enforce such lien shall be brought after three years from the date of the filing of such report and in all other cases no action to enforce such lien shall be brought after three years from the date that determination and assessment of the Director made pursuant to the provisions of this Act became final."

there exists a continuing lien in favor of the Director of Labor of the State of Illinois upon all of the personal property or rights thereto owned by the defendant Advertising Review Publishing Company, A Corporation, on the 30th day of December, 1938, and used by it in connection with its trade, occupation, profession or business, and upon all such personal property or rights thereto, thereafter acquired by said defendant Advertising Review Publishing Company, A Corporation. That such lien is for a sum equal to the amount of contributions, and interest due from the defendant Advertising Review Publishing Company, A Cor-[fol. 19] poration, as above set forth.

(12) That on to-wit, the -- day of March, 1943, the Director of Labor of the State of Illinois caused to be filed with the Recorder of Deeds of Cook County in the State of Illinois, a notice of lien for contributions incurred by the aforementioned defendant Advertising Review Publishing Company, a corporation, for the contributions due for the four calendar quarters of the year 1938, which said notice of lien dated the 23rd day of March, 1943, was recorded by the aforesaid Recorder of Deeds as Document No. 13047396, a true and correct copy of which is attached hereto and made a part hereof, marked Plaintiff's Exhibit "A".

(13) That in accordance with the provisions of Section 26 of the Illinois Unemployment Compensation Act, as amended, it is the duty of the defendant, Advertising Review Publishing Company, A Corporation, to file in this proceeding, a full and complete schedule under oath, of all personal property and rights thereto which it owned at the

time the aforementioned contributions became due or which is subsequently acquired, and to indicate upon such schedule the property so owned by it which was or is used by it in connection with its trade, occupation, profession or business.

(14) That Paragraph 26(d) of the Illinois Unemployment Compensation Act, as amended, provides as follows:

> "(d) Priority of Lien. The lien herein created in favor of the Director shall be prior to all other liens whether general or specific, and shall be inferior only [fol. 20] to any claim for wages filed pursuant to 'An Act to protect employees and laborers in their claims for wages' approved June 15, 1887, as amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claim, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the Recorder of Deeds as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien, the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the Recorder of Deeds as in this Act provided."

(15) That the defendants, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, a Corporation, Maurice S. Weigle, and United States of America, each of whom claim to have some interest in the property being foreclosed by virtue of an assignment for the Benefit of Creditors, or having custody of the funds for the sale of goods and chattels of Advertising Review Publishing Company, a Corporation, or a lien of the United States Government, but that the respective interests of the aforementioned defendants, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, a Corporation, and Maurice S. Weigle and United States of America, are subordinate and inferior to the lien of the Director of Labor as herein set forth; that the lien of the said Director of Labor is paramount to any claim or interest of the aforesaid defendants, William [fol. 21] Fisher, Trustee for the Benefit of Creditors of Ad-

vertising Review Publishing Company, a Corporation, Maurice S. Weigle and United States of America.

(16) That the plaintiff is informed and believes and therefore states upon such information and belief that the aforesaid defendant Advertising Review Publishing Company, a Corporation, is insolvent and that the personal propefty subject to the lien herein being foreclosed, is scant security for the debt due the Director of Labor of the State of Illinois and that unless a Receiver be appointed for all of the said property pending a full and complete hearing upon the issues herein, the plaintiff will suffer financial loss and said property will be wasted.

Wherefore plaintiff prays:

(a). That the Court grant, without notice or Plaintiff's bond, the People's Writ of Injunction directed to the defendants Advertising Review Publishing Company, a Corporation, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, a Corporation, Maurice Weigle and United States of America, and "Unknown Owners", their agents, employees, attorneys and all creditors of the defendant Advertising Review Publishing Company, A Corporation, enjoining and restraining the aforementioned defendants, their agents, employees, attorneys and each of them from wasting, dissipating, concealing, selling, assigning, transferring, disposing of, encumbering or in any way or manner intermeddling with any of the personal property now or heretofore owned by the defendant, Advertising Review Publishing Company, A Cor- [fol. 22] poration, and restraining all creditors from bringing any proceeding or actions in law or in equity against the defendants Advertising Review Publishing Company, A Corporation, which touch upon its personal property or rights thereto used in connection with its business, without first having obtained leave of this Honorable Court.

Plaintiff alleges that his rights will be unduly damaged and that the Director of Labor will suffer irreparable injury if the said injunction prayed for in this cause is not issued forthwith and without notice, good cause having been shown that said injunction should issue without Plaintiff's bond; that if notice of application for injunction is given to the aforementioned defendants there is grave danger that they will dispose of, or otherwise transfer, assign, encumber or conceal the property of the defendant, Advertising Re-

view Publishing Company, A Corporation, and thereby defeat the purpose of said injunction.

(b) That an order be entered by this Honorable Court commanding that the defendant Advertising Review Publishing Company, A Corporation, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, A Corporation, and Maurice S. Weigle, file within a short day to be fixed by the Court, a full and complete schedule under oath, of all personal property and rights thereto, which Advertising Review Publishing Company, A Corporation, owned on the 30th day of December, 1942, or thereafter acquired, and to indicate upon such schedule the property so owned by it which was or is used by it in connection with its trade, occupation, profession or business.

[fol. 23] (c) That the defendants Advertising Review Publishing Company, a Corporation, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, a Corporation, and Maurice S. Weigle, be directed to pay to Francis B. Murphy, Director of Labor, the sum of $1054.91, together with interest at the rate of 1 per cent per month thereon as hereinabove set forth, plus the costs incurred in this proceeding, by a short day to be fixed by the Court and that in default thereof the property of the defendant Advertising Review Publishing Company, a Corporation, subject to the lien of the Director of Labor be sold to satisfy the amount so due; that in case of such sale the defendants and each of them and all persons claiming by or under them, may be forever barred and foreclosed of and from all right in or to the aforesaid property. That if the proceeds of such sale shall exceed the amount necessary to satisfy the claim of the Director of Labor and the costs of this proceeding, the balance if any, shall be paid to such parties as the Court shall find to be entitled thereto.

(d) That in the event the aforesaid property or rights thereto shall not bring at such sale a sufficient sum to pay the amount due to the Plaintiff, that the Plaintiff have judgment against such defendants as the Court shall find to be liable for the payment of such deficiency.

(e) That a Receiver be appointed for said property, and the rights thereto, upon the filing of this complaint, with

the usual powers of Receivers in Chancery, to take and have [fol. 24] immediate possession of said property, and to collect the rents, issues and profits arising out of said property, and disburse the same under the order and direction of this Court.

(f) And that said Plaintiff may have such other and further relief in the premises as the Court may in equity and good conscience see fit to decree.

EXHIBIT "A" TO COMPLAINT

Notice of lien for Contributions under the Illinois Unemployment Compensation Act referred to as Exhibit "A" on page 15 of the Abstract herein in the following form:

State of Illinois
Department of Labor
Division of Placement and Unemployment Compensation
222 West North Bank Drive
Chicago

Notice of Lien for Contributions Under the Illinois Unemployment Compensation Act

Account No. 26925-0165-27

Pursuant to Section 26 of the Illinois Unemployment Compensation Act, as amended, notice is hereby given that there is due to the Director of Labor of the State of Illinois, from the following named employer:

Advertising Review Publishing Company
605 North Michigan Avenue
Chicago, Illinois

contributions, together with interest and penalties thereon, as follows:

[fol. 25]

Period	Wages	Contribution Due	Interest	Penalties	Paid on Account	Balance Due
1st qtr. 1938	$7992.59	$215.80	$126.83	—	—	$342.63
2nd qtr. 1938	6279.54	169.55	94.66	—	—	264.21
3rd qtr. 1938	5966.68	161.10	85.01	—	—	246.11
4th qtr. 1938	4994.38	134.85	67.11	—	—	201.96
						$1054.91

plus additional interest upon the contributions set out above at the rate of 1% per month, or 1/30th of 1% per day, from the date of this notice until paid.

That, by virtue of the above named Section the amount of the aforesaid contributions, interest and penalties, together with such contributions, interest and penalties which may hereafter become due, are a lien, in favor of the Director of Labor of the State of Illinois, upon all the personal property or rights thereto, owned or hereafter acquired by the aforementioned employer, and used by it in connection with its trade, occupation, profession or business.

—— ——, Director of Labor.

Dated this 23rd day of March, 1943.

ORDER OF CONSOLIDATION

Order consolidating cases wherein it is ordered:

2. This case be, and the same is hereby consolidated with the case entitled William Fisher, Trustee for the benefit of Creditors of Advertising Review Publishing Company, a corporation *vs.* Carter H. Harrison, Collector of Internal Revenue and Francis B. Murphy, Director of Labor of the State of Illinois, which case is now pending in this Court as cause No. 42C 1555, and

3. That the time within which the defendants shall make answer herein, be, and the same is hereby extended to June 3, 1943.

[fol. 26]. ANSWER OF MAURICE S. WEIGLE AND WILLIAM FISHER, TRUSTEE

Answer of Maurice S. Weigle and William Fisher, Trustee, to the Complaint of the Director of Labor, wherein it is stated:

1. They admit the allegations contained in paragraphs 1 and 2 of the complaint.

2. That as to the allegations contained in paragraphs 3 to 14, inclusive, these defendants do not have sufficient information, and therefore demand strict proof of each of said allegations.

3. That as to the allegations contained in paragraph 15, the defendant, Maurice S. Weigle, states that he has no in-

terest and has never claimed any interest in the property or assets of the Advertising Review Publishing Company, a Corporation.

4. That the defendant, William Fisher, as Trustee for the Benefit of Creditors of Advertising Review Publishing Company, did file his bill of interpleader against Carter H. Harrison, Collector of Internal Revenue of the United States of America, and against Francis B. Murphy, as Director of Labor of the State of Illinois, in case No. 42 C 1555, pending in the Circuit Court of Cook County, Illinois, with which the within cause has heretofore been consolidated.

5. That the defendant, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, having marshaled all of the assets of said estate and having paid the proper cost of administration thereof up to date, presently holds for the benefit of creditors of said estate entitled thereto, the sum of $1,053.11, and there are no further assets of said Advertising Review Publish- [fol. 27] ing Company which have come to his knowledge, and the said William Fisher states, upon information and belief, that the said sum which he is holding constitutes all of the assets of the said Advertising Review Publishing Company.

Wherefore, having fully answered, the defendant, Maurice S. Weigle, prays that he be dismissed and discharged as a party defendant herein, and the defendant, William Fisher, Trustee for the Benefit of Creditors of Advertising Review Publishing Company, prays that he be directed to pay over to the Clerk of the Circuit Court of Cook County, Illinois, the sum of $1,053.11, being all of the assets of said Advertising Review Publishing Company, and that thereupon he be discharged and dismissed as a party defendant and fully acquitted of all of his duties and responsibilities as Trustee for the Benefit of Creditors of Advertising Review Publishing Company, or for such other orders as to the Court may seem meet and proper in the premises.

Decree—February 18, 1944

Decree entered on the 18th day of February A. D. 1944, wherein the Court finds:

1. On January 9, 1939, Advertising Review Publishing Company, a corporation, did sell, assign, transfer and set

over to William Fisher, as Trustee, all of its right, title and interest in and to all of the property and assets of said Advertising Review Publishing Company for the benefit of its creditors.

2. That the said William Fisher, as Trustee, for the benefit of creditors of Advertising Review Publishing Company, did diligently reduce the assets so assigned to him to pos- [fol. 28] session and converted the same into cash, and he realized therefor the sum of One Thousand Seven Hundred Thirty Four and 40/100 Dollars ($1,734.40).

3. That various tax claims of the State of Illinois and of the United States of America were filed with the said Trustee against the assets in his possession in an amount exceeding the said sum of One Thousand Seven Hundred Thirty Four and 40/100 Dollars ($1,734.40).

4. That thereafter the said William Fisher, as Trustee, did engage the services of counsel and did thereafter file his complaint for interpleader herein, seeking the instruction of this Court as to the distribution to be made of the property in his hands as Trustee.

5. That during the period of the administration of the said Trust Estate disbursements aggregating Six Hundred Ninety Six Dollars and Twenty Nine Cents ($696.29) were made and the costs expended in this cause amounted to Twenty Seven Dollars and Thirty Cents ($27.30) so that the said Trustee presently holds in said Trust Estate the sum of One Thousand Ten Dollars and Eighty One Cents ($1,010.81).

6. That all of the said disbursements and costs incurred were properly incurred and properly expended in the administration of the said Trust Estate.

7. That the defendant, Maurice S. Weigle, has no interest, nor has he ever claimed any interest in the property or assets of the Advertising Review Publishing Company, a [fol. 29] corporation, and that he should be dismissed and discharged as a party defendant herein.

8. That said Trust Estate should be closed at the earliest possible moment and since the ultimate rights of the United States of America and the State of Illinois cannot be fixed with certainty at this moment,

It Is Therefore Ordered, Adjudged and Decreed that the said William Fisher, as Trustee of the benefit of creditors of Advertising Review Publishing Company, pay to the Clerk of the Circuit Court of Cook County the sum of One Thousand Ten Dollars and Eighty One Cents. ($1,010.81) within Seven (7) days from the date hereof and that upon so doing he be fully discharged and dismissed and fully acquitted of all of his duties and responsibilities as Trustee for the benefit of creditors of Advertising Review Publishing Company and that Maurice S. Weigle be discharged and dismissed as a party defendant herein.

ORDER GRANTING DIRECTOR OF LABOR PRIORITY TO THE EXTENT OF 90% AND TO THE COLLECTOR OF INTERNAL REVENUE, 10% OF THE SUM IN THE HANDS OF THE CLERK OF THE CIRCUIT COURT.

Order entered on the 29th day of February, A. D. 1944, as follows:

This matter coming up on hearing and the Court being fully apprised of the premises herein and having heard arguments made by opposing counsel with reference to the priority of the liens of the Director of Labor of the State of Illinois, over the claim of the Collector of Internal Revenue.

It Is Therefore Ordered, Adjudged and Decreed, that the lien of the Director of Labor of the State of Illinois, administrator of the Illinois Unemployment Compensation [fol. 30] Act, be given priority to the extent of 90 per cent of the funds now on deposit with the Clerk of the Circuit Court, and that the Collector of Internal Revenue have priority as to the 10 per cent remaining.

Notice of Appeal by the United States of America.

Proof of service of Notice of Appeal by the United States of America.

Praecipe for Record and Proof of Service to Clerk of the Circuit Court of Cook County.

Certificate of Clerk of the Circuit Court of Cook County to Transcript of Record.

J. Albert Woll, United States Attorney, Attorney for Appellant.

John B. Stephan, Assistant United States Attorney.

[fol. 31] IN SUPREME COURT OF ILLINOIS

EXCERPTS FROM APPELLEE'S BRIEF

And afterwards, to-wit: on the 6th day of January, A. D. 1945, the same being one of the days in vacation after the Term of Court aforesaid, there was filed in this office a certain brief of appellee the heading of Argument I on page six being in the words and figures following, to-wit:

> The extension of the priority given by Section 191, Title 31, U. S. C. (referred to as Section 3466) to liens or claims for unpaid unemployment compensation contributions so as to deprive the State of such contributions is inconsistent with the intent of Congress as expressed in the Social Security Act of 1935, Second Deficiency Appropriation Act of 1938, Section 1601 of the Internal Revenue Act of 1939 and Sections 601 and 602 of the Revenue Act of 1943.

And, also heading of Argument III, appearing on page twenty-nine of brief of appellee, which is in the words and figures following, to-wit:

> The claim of the Director of Labor is a secured claim and as such has complete priority over the unsecured claim of the United States.

[fols. 32-33] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ARGUMENT AND SUBMISSION—March 20, 1945

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motions

being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by John B. Stephan for appellant and by William C. Wines for appellee is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 34] IN THE SUPREME COURT OF ILLINOIS,

Docket Nos. 28474, 28490

Agenda 22—March, 1945

The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Chicago Waste & Textile Company et al.—(Carter H. Harrison, Collector of Internal Revenue, Appellant.)

The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Advertising Review Publishing Company et al.—(United States of America, Appellant.)

OPINION—May 23, 1945

Mr. Justice Smith delivered the opinion of the court:

These cases have been consolidated for opinion in this court. The issues involved are such that each case must be considered separately in this opinion. We will first consider cause No. 28474. That case is an appeal by Carter H. Harrison, Collector of Internal Revenue, from an order of the circuit court of Cook county, denying his claim for priority of payment. The claim for which priority of payment is sought is the amount of Federal insurance contribution taxes and Federal unemployment taxes due the Federal government from an insolvent employer. Appellee's claim as Director of Labor of the State of Illinois, against the same fund, is for unemployment compensation contributions, plus penalties, interests and costs due the State of Illinois. The amounts due both appellant and appellee accrued against Chicago Waste & Textile Com-

pany. A judgment was entered against that company in favor of one of its creditors in the municipal court of Chicago. An execution was issued and placed in the hands of the bailiff of the municipal court, whereupon appellee, as Director of Labor of the State of Illinois, on June 29, 1942, filed this suit in the circuit court of Cook county.

The purpose of the suit was to foreclose the tax lien for the unpaid unemployment compensation contributions due the State, for appointment of a receiver and for an injunction restraining the sale of the property under the execution. Upon the filing of the complaint, a receiver was appointed, as prayed. Thereafter, the property was liquidated by the receiver. The net amount arising from the liquidation of the property was $677.81, which the court ordered deposited with the clerk of the circuit court, subject to the further order of the court. The claim of appellant and the claim of appellee were each in an amount in excess of the amount of the funds on deposit.

On November 16, 1942, appellant filed his intervening petition. In this intervening petition, after reciting the filing [fol. 35] of the claim in the cause on October 9, 1942, he alleged that by virtue of section 3466 of the Revised Statutes of the United States, his claim was entitled to priority of payment to the extent of the funds on deposit with the clerk. To this intervening petition, appellee filed his answer in which he denied that the claim of appellant was entitled to priority of payment. He alleged that there was due the State of Illinois from the insolvent employer for unemployment compensation contributions, the sum of $738.49, plus penalties; that said contributions were a lien on the property of the insolvent employer; that notice of the lien had been filed in the office of the recorder, as required by statute; that the lien for contributions due the State of Illinois was entitled to priority of payment over the claim of appellant and all other creditors.

Upon a hearing it was adjudged that appellee was entitled to priority to the extent of 90 per cent of the funds on deposit with the clerk, and that appellant was entitled to priority as to the remaining 10 per cent of such funds. To review that order, appellant, as Collector of Internal Revenue, perfected an appeal to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

Appellant claims the right of priority of payment of the taxes due the Federal government under section 1600 of the Federal Unemployment Tax Act (26 U. S. C. 1600; formerly title IX of the Social Security Act,) under section 3466 of the Revised Statutes of the United States (31 U. S. C. 191,) which provides that whenever any person indebted to the United States is insolvent, or his estate is insufficient to pay all his debts, the debts due to the United States shall be first satisfied.

Appellee claims that taxes due the Federal government under the Federal Unemployment Tax Act are not such debts as are comprehended within the provisions of said section 3466 of the Revised Statutes. Appellee further contends that even though the taxes due the Federal government in this case are debts due the United States within the purview of said section 3466, the State of Illinois has a prior lien on the assets of the taxpayer for the amount due the State under section 26(a) of the Unemployment Compensation Act of Illinois. Ill. Rev. Stat. 1943, chap. 48, par. 243.

In the view we take, it will not be necessary to decide either of the above questions raised by the parties in this particular case. Section 1600 of the Federal Unemployment [fol. 36] Tax Act (26 U. S. C. 1600) imposes an excise tax equal to 3 per cent of the total wages paid during each calendar year upon all employers having eight or more employees. Section 1601(a) (26 U. S. C. 1601(a)) of said act provides that the taxpayer may credit against the taxes imposed by section 1600, the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State, which is certified for the taxable year as provided in section 1603. The Illinois Unemployment Compensation Act was approved and certified by the Federal Social Security Board as provided in said section 1603. Section 1601(c) provides that the total amount of credits allowed "shall not exceed 90 per centum of the tax against which such credits are allowed." Section 1601(a) (3) provides that such credit shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required by section 1604 to file a return for such year "except that credit shall be permitted for contributions paid after such last day, but before July 1 next following

such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last date." Section 1604 (26 U. S. C. 1604) fixes January 31, as the last day on which returns for the preceding calendar year shall be filed.

The claim of appellant is for taxes due the Federal government accruing in the years 1941 and 1942. The last due date of the return for the year 1941, under section 1604, was January 31, 1942. The last due date of the return for the year 1942 was January 31, 1943.

Section 602(b) of the Revenue Act of 1943 (26 U. S. C. 602(b),) provides: "Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, 1940, 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive * * * in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction * * *."

[fol. 37] The record in this case shows that the receiver was appointed on June 29, 1942. The receiver qualified on June 30, 1942. This was prior to the expiration of the last day on which the taxpayer was entitled to a credit on the Federal taxes for the year 1941, for payments made to the State. The assets were, therefore, in the custody and under the control of a receiver during the period from the last day upon which the taxpayer was required to file a return of the tax against which credit is claimed and June 30 next following such last day, inclusive. Such assets were also in the hands of the receiver during all the time subsequent to that period. Under section 602(b) of the Revenue Act of 1943, all limitations as to the time of payment, when the assets were in the hands of a receiver, were removed. The receiver was, therefore, at any time after his appointment, entitled to pay contributions for the years 1941 and 1942 to the State and was entitled to credit on the taxes due

the Federal government for the amounts paid to the State, up to 90 per cent of the taxes due the Federal government, for both years.

This brings us to a consideration of cause No. 28490. This case presents the questions on a different factual record from that presented by the record in cause No. 28474. This case is an appeal by the United States from a decree entered by the circuit court of Cook county. The appeal was also taken to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

The record shows that on January 9, 1939, Advertising Review Publishing Company made a general assignment of its assets and property to William Fisher, trustee, for the benefit of its creditors; that he had reduced the assets to cash and had remaining in his hands the net amount of $1253.11; that Carter H. Harrison, Collector of Internal Revenue, had filed claims with the trustee for capital stock tax and claims for taxes accruing under the Federal Unemployment Tax Act, aggregating more than the total amount of funds in the hands of the trustee. The director of the Department of Labor of the State of Illinois also filed claims with the trustee for unemployment compensation contributions due the State of Illinois in the amount of $721.29, plus interest.

On February 11, 1942, Fisher, the trustee, filed his complaint in this cause in the nature of an interpleader, asking for instructions of the court as to the distribution of the funds in his hands. The Collector of Internal Revenue [fol. 38], and the Director of the Department of Labor of the State of Illinois were both made parties defendant. On April 2, 1943, the Director filed his complaint in the circuit court in equity for the purpose of foreclosing [illegible] lien on the assets in the hands of the trustee for the unemployment compensation contributions due the State of Illinois. These two cases were thereafter consolidated. On order of the court, the funds in the hands of the trustee were impounded with the clerk of the court to abide the result of the suit. On motion and by leave granted, the United States of America was substituted as a party to the suit in lieu of the Collector of Internal Revenue, and he was dismissed out of the case.

Upon a hearing, a decree was entered finding that the lien of the Director of Labor of the State of Illinois on

the assets involved gave to him priority of payment to the extent of 90 per cent of the funds on deposit with the clerk and that the United States was entitled to priority of payment as to the remaining 10 per cent of said funds on deposit. From this decree the United States perfected the appeal.

What we have heretofore said in this opinion in disposing of cause No. 28474 has no application to this case, for the reason that the taxes involved in this case accrued in the year 1938 and prior years. The assets of the insolvent taxpayer were not in the custody or control of a receiver during any period mentioned in section 602(b) of the Federal Unemployment Tax Act, as enacted in the Revenue Code of 1943. The taxes with which we are here concerned were not subject to the provisions of that section.

Appellant claims the right of priority of payment of the taxes due the United States under the Federal Unemployment Tax Act because of the priority granted to the United States by section 3466 of the Revised Statutes of the United States (31 U. S. C. 191), which reads as follows: "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent [fol. 39] debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

Appellee, in an effort to demonstrate that it was not the intention of Congress that claims for taxes due under the Federal Unemployment Tax Act should be subject to the priority of payment provisions of said section 3466, has presented an interesting and illustrative argument. He has analyzed and presented both the State and Federal acts and their relations to each other. It is pointed out that the Federal act is not in itself a complete unemployment compensation law; that it merely provides for the collection of payroll taxes, but makes no provision for the payment of unemployment compensation to employees; that this function is left entirely to the States. It is further

pointed out that section 902 of the Social Security Act of 1935, which is section 1601 of the Internal Revenue Code of 1939, allowed a credit against the Federal taxes imposed for payments made into an approved State unemployment compensation fund to the extent of 90 per cent of the amount of the taxes due under the Federal act, if such payments were made to the State fund before the last due date of the Federal return of the employer; that the last due date of such return was January 31 of the year following that in which the wages were paid.

It is further pointed out that if payment of the State contributions was not made before the due date of the Federal return, and payment was made thereafter, but before June 30 next following such due date, a credit of 90 per cent of the credit, or 81 per cent, is allowed; that if the assets of the taxpayer are in the custody or control of a court of competent jurisdiction at any time between the last due date of the return and June 30 following, this limitation is removed and the full credit of 90 per cent is allowed; that by the Revenue Act of 1940, such limitation on the time of the payment, in order to obtain the credit, was extended to December 6, 1940; that if the assets of the taxpayer were in the hands of a receiver at any time during the fifty-nine day period following December 6, 1940, and such State contributions were paid by the receiver during that time, he would be entitled to credit for the amount paid to the State, up to 90 per cent of the Federal taxes; that by the Revenue Acts of 1941 and 1943, this policy was continued and the limitations as to the time of payment, in order to obtain the credit, were further extended.

From this it is argued that the provisions relating to credits allowed on the Federal taxes for unemployment [fol. 40] contributions paid to the State, up to 90 per cent of the taxes due the Federal government, were intended to encourage the employer to promptly pay his State contributions; that it was not contemplated by Congress in the enactment of this legislation that more than 10 per cent of the 3 per cent Federal payroll taxes should belong to the Federal government; that the purpose of Congress in providing that 10 per cent of the Federal taxes be paid to the Federal government, regardless of the amount which the taxpayer might pay to the State, was to create a fund for the use of the Federal government in the administra-

tion of the Federal act and its supervision of the administration of the State acts by the several States.

From this it is said that in reality the Federal taxes are levied only for the purpose of co-ordinating the administration of the acts of the several States with the Federal act, under the supervision of the National government. It is further contended that the primary purpose of the Federal act was to encourage the States to pass State unemployment compensation acts and to assist the States in the administration of such acts.

Upon this basis it is contended that it was the intention of Congress that the Federal taxes, except as to the amount of 3/10 of one per cent of the payrolls were, in fact, levied for the use and benefit of the States and that, other than the 10 per cent for which no credit can be taken for the payments into a State unemployment compensation fund, the Federal government has no interest therein; that such 10 per cent reserved to the Federal government is for the sole purpose of defraying the expenses of administering the acts.

This argument, however plausible and logical it may seem, loses sight of the fact that the taxes imposed by the Federal act at the rate of 3 per cent on the payrolls of those employers having eight or more employees, are taxes imposed by, and which belong to, the Federal government. All of the provisions pointed out concerning credits for taxes paid into the unemployment compensation fund of the State relate to the administration of the act. They are administrative in character. By the Federal act, taxes are levied at the rate of 3 per cent on the payroll of every employer in the United States employing eight or more persons. The act was sustained by the Supreme Court of the United States in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 57 S. Ct. 883, because the payments exacted [fol. 41] thereunder were found to be taxes levied under the powers conferred on Congress by section 8 of article I of the constitution. Such payments were held to be excise taxes.

Under the act, therefore, excise taxes are levied by the Congress upon employers at the rate of 3 per cent of their payrolls. The fact that the act makes provision for a reduction in the amount of the taxes, or a surrender or waiver of a portion thereof, equal to the amount paid by the taxpayer into an approved State unemployment compensation

fund, up to 90 per cent of the taxes due, does not change the character of the act as one levying or imposing taxes. The full amount of 3 per cent of the payroll constitutes taxes due the Federal government. The waiver of a portion thereof for the purpose of encouraging employers to promptly pay their State unemployment compensation contributions does not change the character of payment exacted by the Federal act. In the first instance, 100 per cent of the taxes levied constitute taxes due the Federal government. The full amount continues to be taxes due the Federal government either until it is all paid to the Federal government, or 90 per cent is paid to the State and the balance to the Federal government. The provisions of the act for credits equal to the amount paid to the State, up to 90 per cent of the taxes due the Federal government, being administrative in character, do not change the character of the taxes imposed. They are still taxes due the Federal government and constitute a debt due to the United States within the purview of section 3466 of the Revised Statutes.

The cases cited and relied upon by appellee are not in point. Those cases involved payments due the United States of an entirely different character from those here involved. *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, 50 S. Ct. 212, involved money due the United States under the Transportation Act of 1920.

Mellon v. *Michigan Trust Co.*, 271 U. S. 236, 46 S. Ct. 511, involved a claim due the Director General of Railroads for transportation charges against an insolvent corporation. In *United States* v. *Marcus*, 297 U. S. 206, 59 S. Ct. 811, the claim was for money due the Federal Housing Administrator. In neither of those cases was the claim for taxes due the United States.

It has been repeatedly held by the Supreme Court that taxes due the United States are debts due the United States, within the meaning of section 3466 of the Revised Statutes. *Price* v. *United States*, 269 U. S. 492, 46 S. Ct. 180; [fol. 42] *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 9 L. ed. 1017; *United States* v. *Bank of North Carolina*, 6 Pet. 29, 8 L. ed. 29.

Appellee also cites and relies on the case of *Ricard* v. *Bijou Furniture Co.*, 67 R. I. 251, 21 Atl. 2d 563. It is true this case sustains the contentions of appellee. However, we think the court in that case overlooked the fact

that taxes due under the Federal Unemployment Tax Act are taxes due the United States and, consequently, are debts due the United States within the scope of section 3466 of the Revised Statutes.

It is elementary that the priority given the United States by section 3466 cannot be impaired or superseded by State laws. *United States* v. *Oklahoma*, 261 U. S. 253, 67 L. ed. 638.

It follows that the claim of appellant was a debt due the United States from an insolvent debtor who had committed an act of bankruptcy under section 21 of chapter 3 of the Bankruptcy Act (11 U. S. C. 21), by making a general assignment for the benefit of its creditors. Such claim was, therefore, entitled to priority of payment out of the assets of the insolvent debtor, unless the State of Illinois had such a lien on such assets as would remove them from the priority rights granted by section 3466 of the Revised Statutes.

It is claimed by appellee that he did have such a lien. This contention is based upon section 26(a) of the Unemployment Compensation Act of Illinois. (Ill. Rev. Stat. 1943, chap. 48, par. 243.) That section, in so far as material, reads as follows: "A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

It is contended by appellant that the lien given by this section of the statute is not a perfected, fixed lien; that at most it is merely an inchoate right to a lien. It will be remembered that the only thing done by the Director to establish or to enforce such lien, as against the property [fol. 43] of the debtor, was the filing of this suit on April 2, 1943, whereas the assignment was made by the insolvent debtor on January 9, 1939. The right to priority of payment under section 3466 attaches, if at all, at the time of the assignment.

In the very late case of *United States* v. *Waddill, Holland & Flinn*, in an opinion filed January 2, 1945, the Supreme Court of the United States had before it a similar question. (65 S. Ct. 304.) The case arose in Virginia. The debtor had made an assignment for the benefit of creditors. Claims were made by the United States for unpaid taxes under the Federal Unemployment Tax Act and for a debt arising out of a Federal Housing Administration transaction. The landlord of the debtor, twelve days after the assignment was made, obtained a distress warrant, which was levied on the debtor's property. The applicable provisions of the statutes of Virginia gave to the landlord the right to levy distress for six months rent upon "any goods of the lessee * * * found on the premises, or which may have been removed therefrom not more than thirty days * * * for not more than six months rent." The distraining landlord claimed a lien on the property of the debtor and a priority of payment over the claim of the Federal government, based upon the lien given him by statute on the goods of the insolvent debtor. The Supreme Court of Virginia held that the provisions of the statute of that State, referred to, "give the landlord a lien which is fixed and specific and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment which are merely remedies for enforcement." In disposing of that question, the Supreme Court of the United States said:

"The words of section 3466 are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States. Thelusson v. Smith, 2 Wheat. 396, 425, 4 L. Ed. 271; United States v. Texas, supra, 314 U. S. at page 484; 62 S. Ct. at page 352, 86 L. Ed. 356. But this court in the past has recognized that certain exceptions could be read into this statute. The question has not been expressly decided, however, as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency or voluntary assignment. * * * It is within this suggested exception that the landlord and the municipality seek to bring themselves. [fol. 44] Once again, however, we do not reach a decision as to whether such an exception is permissible for we do not

believe that the asserted liens of the landlord and the municipality were sufficiently specific and perfected on the date of the voluntary assignment to cast any serious doubt on the priority of the claim of the United States. * * *

"The Supreme Court of Appeals of Virginia has here held that these sections 'give the landlord a lien which is fixed and specific, and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment, which are merely remedies for enforcing it.' 182 Va. at page 363, 28 S. E. 2d at page 746. It has also held that such a lien 'relates back to the beginning of the tenancy,' 182 Va. at page 364, 28 S. E. 2d at page 746, thus giving it force and effect on date of the voluntary assignment. These interpretations of the Virginia statutes, as propositions of state law, are binding. But it is a matter of federal law as to whether a lien created by state statute is sufficiently specific and perfected to raise questions as to the applicability of the priority given the claims of the United States by an act of Congress. If the priority of the United States is ever to be displaced by local statutory lien, federal courts must be free to examine the lien's actual legal effect upon the parties. A state court's characterization of a lien as specific and perfected, however conclusive as a matter of state law, cannot operate by itself to impair or supercede a long-standing Congressional Declaration of priority. * * *

"Tested by its legal effect under Virginia law, the landlord's lien in this instance appeared to serve 'merely as a caveat of a more perfect lien to come.' People of State of New York v. Maclay, supra, 288 U. S. at page 294, 53 S. Ct. at page 324, 77 L. Ed. 754. As of the date of the voluntary assignment, it was neither specific nor perfected. It gave the landlord only a general power over unspecified property rather than an actual interest in a definitive portion or portions thereof. * * *

"Nor was the statutory lien perfected as a matter of actual fact, regardless of how complete it may have been as a matter of state law. The tenant was divested of neither title nor possession by the silent existence of the landlord's statutory lien on the date of the assignment. Only after the lien was actually asserted and an attachment or a distraint levied, enabling the landlord to satisfy his claim out of the seized goods, could it be argued that

such goods severed themselves from the general and free [fol. 45] assets of the tenant from which the claims of the United States were entitled to priority of payment. Prior to that time the lien operated to do no more than prevent the removal of goods from the premises by certain classes of persons, Va. Code par. 5524, and give the landlord priority in distribution under state law provided that the goods remained on the premises. Such a potential, inchoate lien could not disturb the clear command of section 3466 of the Revised Statutes. Something more than a 'caveat of a more perfect lien to come' was necessary."

It seems to us that the above language of the court is conclusive in this case. We are forced to the conclusion that the taxes due the Federal government from the insolvent debtor in this case were debts due the United States within the purview of section 3466 of the Revised Statutes. It is equally clear that appellee did not have such a lien upon assets of the insolvent debtor, under section 26(a) of the Unemployment Compensation Act of Illinois, as to give him priority of payment over the claim of the Federal government. In view of this, appellant was entitled to priority of payment over the claim of the State of Illinois.

In cause No. 28474, the judgment of the circuit court is reversed and the cause is remanded to that court, with directions to enter an order directing the payment of the funds on deposit to the Director of the Department of Labor of the State of Illinois. The order will provide that the amount paid to the Director be credited on the claim of appellant against the insolvent debtor.

In cause No. 28490, the decree of the circuit court is reversed and the cause is remanded to that court, with directions to enter a decree finding that the United States is entitled to priority of payment to the extent of the funds on deposit, and ordering distribution accordingly.

Reversed and remanded, with directions.

[fols. 46-47] IN SUPREME COURT OF ILLINOIS

No. 28490

PEOPLE ex rel. FRANCIS B. MURPHY, Director of Labor of the State of Illinois, Appellee,

vs.

CARTER H. HARRISON, etc., et al.; and ADVERTISING REVIEW PUBLISHING COMPANY, a Corporation,

On Appeal of United States of America, Appellant

Appeal from Circuit Court, Cook County

420 1555

430 3428

JUDGMENT—May 23, 1945

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the decree aforesaid, there is manifest error.

Therefore, it is considered by the Court that for that error and others in the record and proceedings aforesaid the decree of the Circuit Court of Cook County in this behalf rendered, Be Reversed, Annulled, Set Aside and Wholly for Nothing Esteemed, and this cause be remanded to the Circuit Court of Cook County with directions to enter a decree finding that the United States is entitled to priority of payment to the extent of the funds on deposit, and ordering distribution accordingly.

[fols. 48-50] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

NOTICE OF INTENTION TO APPLY FOR REHEARING—Filed May 31, 1945

To: Hon. Earle Benjamin Searcy, Clerk of the Supreme Court, Springfield, Illinois.

Hon. Edwin Hill Cooke, Official Reporter, Bloomington, Illinois.

You Are Hereby Notified that it is the intention of the People of the State of Illinois, appellee, to ask for a rehearing in the above entitled cause.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Appellee

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[fol. 51] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

PETITION FOR REHEARING—Filed June 16, 1945

Appellee, the Director of Labor, respectfully and earnestly requests a rehearing in this cause.

In support of this petition, it is submitted that:

[fol. 52] The Court Overlooked the Application of Section 602(a)(1) of the Revenue Act of 1943 (26 U. S. C. 602(a)(1)) and Thereby Unintentionally Committed Itself to a Serious Inconsistency with the Opinion Which it Rendered on the Same Day in the Consolidated Case, the People for the Use of Murphy v. Chicago Waste and Textile Company, et al., Docket No. 28474.

In *The People for the Use of Murphy v. Chicago Waste and Textile Company, et al.*, Docket No. 28474, consolidated for opinion with the instant case, this Court applied Section 602(b) of the Revenue Act of 1943 (26 U. S. C. 602(b)), and held that since the receiver in that cause was at any time after his appointment entitled to pay contributions for the years 1941 and 1942 to the State of Illinois and was entitled to credit against the taxes due the Federal Government the amounts paid to the State, up to 90 per

cent of the taxes due the Federal Government for both years, an order should be entered directing the payment of the funds on deposit to the Director of the Department of Labor of the State of Illinois, with a further provision that the amount paid to the Director be credited on the claim of the Federal Government against the insolvent debtor.

The instant case involves contributions for the year 1938, to which year Section 602(b) does not apply. However, under Section 602(a)(1) of the Revenue Act of 1943 (26 U. S. C. 602(a)(1)), the trustee for the benefit of the creditors of Advertising Review Publishing Company, at any time after February 25, 1944, was entitled to pay contributions for the year 1938 to the State of Illinois, and [fol. 53] upon payment thereof was entitled to credit against the taxes due the Federal Government for the amounts paid to the State, up to 81 per cent of the taxes due the Federal Government for the year 1938; and the Circuit Court of Cook County could and should have ordered the trustee to pay the funds on deposit to the Director of the Department of Labor of the State of Illinois.

Section 602 of the Revenue Act of 1943 (26 U. S. C. 602) provides in part as follows:

> "Section 602. Credit Against Federal Unemployment Taxes for Years 1936 to 1942.—(a) Allowance of Credit Against Tax for 1936, 1937, and 1938.—Against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, any taxpayer shall be allowed credit (if credit is not allowable under section 902 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—
>
> "(1) Without regard to the date of payment, to the extent hereinafter provided in this subsection;
>
> "(2) Without regard to the date of payment, with respect to wages paid after September 19, 1939;
>
> "(3) Without regard to the date of payment, if the assets of the taxpayer were, at any time during the period August 11, 1939, to October 8, 1939, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941, to November 18, 1941, inclusive, in the custody or control of a

receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

[fol. 54] "The provisions of the Social Security Act in force prior to February 11, 1939 (except the provision limiting the credit to amounts paid before the date of filing returns), shall apply to allowance of credit under this subsection:"

These Sections were superseded by Sections 1600 and 1600(a) of the Internal Revenue Code, approved

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* Sections 901 and 902 of the Federal Social Security Act, approved August 14, 1935 (42 U. S. C., C. 7 (Supp.)), provided as follows:

"Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

"(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

"(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

"(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

"Sec. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903."

February 10, 1939. Under Section 902 of the Federal Social Security Act of 1935, a taxpayer who paid contributions into the unemployment fund of a State whose unemployment compensation law was certified by the Social Security Board was entitled to a credit of 90 per cent against the tax imposed by Section 901, providing that contributions were paid into the State fund before the date of filing the return for the tax imposed by Section 904.

Under the provisions of Section 602(a)(1) of the Revenue Act of 1943 a credit is permitted as prescribed by Section 902 to any taxpayer who pays delinquent State taxes for 1936, 1937, or 1938, no matter when such payment is made, except that the amount [fol. 55] of the credit is reduced from 90 per cent to 81 per cent *except that the amount of credit against the tax for the calendar year 1936, 1937, or 1938, for contributions paid after December 6, 1940, shall not (unless the credit is allowable on account of paragraph (2) or (3)) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid before the last day upon which the taxpayer was required under section 905 of such Act to file a return for such year.* The terms used in this subsection shall have the same meaning as when used in title IX of such Act prior to February 11, 1939. The total credit allowable against the tax imposed by section 901 of such Act for the calendar year 1936, 1937, or 1938 shall not exceed 90 per centum of such tax.

"(b) Allowance of Credit Against Tax for 1939, 1940, 1941, and 1942 Where Assets in Control of Court. —Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, 1940, 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive, or (in the case

of credit against the tax for the calendar year 1939) the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941, to November 18, 1941, inclusive, or (in the case of credit against the tax for the calendar year 1940) the period September 21, 1941, to November 18, 1941, inclusive, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction. The provisions of the Federal Unemployment Tax Act (except section 1601(a)(3)), [fol. 564] including such provisions as modified by section 902(e) of the Social Security Act Amendments of 1939, shall apply to allowance of credit *under this subsection*. The terms used in this subsection shall have the same meaning as when used in the Federal Unemployment Tax Act. The total credit allowable against the tax imposed by such Act for the calendar year 1939, 1940, 1941, or 1942 shall not exceed 90 per centum of such tax." (Emphasis ours.)

Under Section 602(a)(1), an employer who pays delinquent taxes for the year 1938 due under a State unemployment compensation law, receives an 81 per cent credit against the Federal tax, no matter when he pays the State tax, and the provision is *retroactive*.

Although the Court applied Section 602(b) in *The People for the Use of Murphy, v. Chicago Waste and Textile Company*, Docket No. 28474, it overlooked the fact that Section 602(a)(1) is equally applicable with respect to the situation existing in this cause. Under Section 602(b), for the years 1939 to 1942 inclusive, a taxpayer is entitled to credit of 90 per cent against the Federal tax, if the assets of the taxpayer were, during specified periods of time, in the custody or control of a receiver; under Section 602(a)(1) any taxpayer is entitled to credit for the years 1936, 1937 and 1938 *without regard to the date of payment* and even though his assets were not in the custody of a receiver or trustee, but is limited to a credit of 81 per cent, instead of 90 per cent.

In other words, the trustee under the general assignment at any time after February 25, 1944 was entitled to pay the full amount of the contributions for the year 1938 due the State of Illinois and to receive a credit against the taxes due the Federal Government up to 81 per cent. On

[fols. 57-58] the basis of the same reasoning as was applied in *The People for the Use of Murphy* v. *Chicago Waste and Textile Company*, Docket No. 28474, this court should hold that the Circuit Court of Cook County could and should have entered an order on February 29, 1944 or at any time thereafter, directing the trustee to pay the State of Illinois, with provisions allowing the trustee a credit of 81 per cent against the claim of the United States.

Consistency requires that the principle applied in *The People for the Use of Murphy* v. *Chicago Waste and Textile Company*, Docket No. 28474, be followed in this cause.

Appellee, therefore, respectfully prays this Court to grant a rehearing in this cause.

Respectfully submitted, George F. Barrett, Attorney General of the State of Illinois, Attorney for Appellee.

William C. Wines, Assistant Attorney General, of Counsel.

[fols. 59-60] In Supreme Court of Illinois

[Title omitted]

Order Denying Petition for Rehearing—September 17, 1945

And now on this day the Court having duly considered the Petition for Rehearing filed herein, and being now full-advised of and concerning the premises, doth overrule the prayer of the Petition and denies a rehearing.

[fol. 61] IN SUPREME COURT OF ILLINOIS

Docket Nos. 28474, 28490.—Agenda 22—March, 1945

The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Chicago Waste & Textile Company et al.—(Carter H. Harrison, Collector of Internal Revenue, Appellant.)—The People for the use of Francis B. Murphy, Director of Labor, Appellee, v. Advertising Review Publishing Company et al.—(United States of America, Appellant.)

MODIFIED OPINION—September 17, 1945

Mr. Justice Smith delivered the opinion of the court:

These cases have been consolidated for opinion in this court. The issues involved are such that each case must be considered separately in this opinion. We will first consider cause No. 28474. That case is an appeal by Carter H. Harrison, Collector of Internal Revenue, from an order of the circuit court of Cook county, denying his claim for priority of payment. The claim for which priority of payment is sought is the amount of Federal insurance contribution taxes and Federal unemployment taxes due the Federal government from an insolvent employer. Appellee's claim as Director of Labor of the State of Illinois, against the same fund, is for unemployment compensation contributions, plus penalties, interests and costs due the State of Illinois. The amounts due both appellant and appellee accrued against Chicago Waste & Textile Company. A judgment was entered against that company in favor of one of its creditors in the municipal court of Chicago. An execution was issued and placed in the hands of the bailiff of the municipal court whereupon appellee, as Director of Labor of the State of Illinois, on June 29, 1942, filed this suit in the circuit court of Cook county.

The purpose of the suit was to foreclose the tax lien for the unpaid unemployment compensation contributions due the State, for appointment of a receiver and for an injunction restraining the sale of the property under the [fol. 62] execution. Upon the filing of the complaint, a receiver was appointed, as prayed. Thereafter, the property was liquidated by the receiver. The net amount arising from the liquidation of the property was $677.81, which

the court ordered deposited with the clerk of the circuit court, subject to the further order of the court. The claim of appellant and the claim of appellee were each in an amount in excess of the amount of the funds on deposit.

On November 16, 1942, appellant filed his intervening petition. In this intervening petition, after reciting the filing of the claim in the cause on October 9, 1942, he alleged that by virtue of section 3466 of the Revised Statutes of the United States, his claim was entitled to priority of payment to the extent of the funds on deposit with the clerk. To this intervening petition, appellee filed his answer in which he denied that the claim of appellant was entitled to priority of payment. He alleged that there was due the State of Illinois from the insolvent employer for unemployment compensation contributions, the sum of $738.49, plus penalties; that said contributions were a lien on the property of the insolvent employer; that notice of the lien had been filed in the office of the recorder, as required by statute; that the lien for contributions due the State of Illinois was entitled to priority of payment over the claim of appellant and all other creditors.

Upon a hearing it was adjudged that appellee was entitled to priority to the extent of 90 per cent of the funds on deposit with the clerk, and that appellant was entitled to priority as to the remaining 10 per cent of such funds. To review that order, appellant, as Collector of Internal [fol. 63] Revenue, perfected an appeal to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

Appellant's claim is, in part, for taxes due under section 1600 of the Federal Unemployment Tax Act, and, in part, for Federal insurance contributions under section 804 of title VIII of the Social Security Act. We will consider first that part of the claim arising under the Federal Unemployment Tax Act.

Appellant claims the right of priority of payment of the taxes due the Federal government under section 1600 of the Federal Unemployment Tax Act (26 U. S. C. 1600; formerly title IX of the Social Security Act,) under section 3466 of the Revised Statutes of the United States (31 U. S. C. 191,) which provides that whenever any person indebted to the United States is insolvent, or his estate is insufficient to

pay all his debts, the debts due to the United States shall be first satisfied.

Appellee claims that taxes due the Federal government under the Federal Unemployment Tax Act are not such debts as are comprehended within the provisions of said section 3466 of the Revised Statutes. Appellee further contends that even though the taxes due the Federal government in this case are debts due the United States within the purview of said section 3466, the State of Illinois has a prior lien on the assets of the taxpayer for the amount due the State under section 26(a) of the Unemployment Compensation Act of Illinois. Ill. Rev. Stat. 1943, chap. 48, par. 243.

In the view we take, it will not be necessary to decide either of the above questions in connection with appellant's claim for priority as to the taxes due under the Federal Unemployment Tax Act. Section 1600 of the Federal Unemployment Tax Act (26 U. S. C. 1600) imposes an excise tax [fol. 64] equal to 3 per cent of the total wages paid during each calendar year upon all employers having eight or more employees. Section 1601(a) (26 U. S. C. 1601(a)) of said act provides that the taxpayer may credit against the taxes imposed by section 1600, the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State, which is certified for the taxable year as provided in section 1603. The Illinois Unemployment Compensation Act was approved and certified by the Federal Social Security Board as provided in said section 1603. Section 1601(c) provides that the total amount of credits allowed "shall not exceed 90 per centum of the tax against which such credits are allowed." Section 1601(a)(3) provides that such credit shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required by section 1604 to file a return for such year "except that credit shall be permitted for contributions paid after such last day, but before July 1 next following such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last date." Section 1604 (26 U. S. C. 1604) fixes January 31, as the last day on which returns for the preceding calendar year shall be filed.

The claim of appellant is for taxes due the Federal government accruing in the years 1941 and 1942. The last due date of the return for the year 1941, under section 1604, was January 31, 1942. The last due date of the return for the year 1942 was January 31, 1943.

Section 602(b) of the Revenue Act of 1943 (26 U. S. C. 602(b),) provides: "Against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, 1940, [fol. 65] 1941, or 1942, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law, without regard to the date of payment, if the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required under section 1604 of the Federal Unemployment Tax Act to file a return of the tax against which credit is claimed to June 30 next following such last day, inclusive * * * in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction * * *."

The record in this case shows that the receiver was appointed on June 29, 1942. The receiver qualified on June 30, 1942. This was prior to the expiration of the last day on which the taxpayer was entitled to a credit on the Federal taxes for the year 1941, for payments made to the State. The assets were, therefore, in the custody and under the control of a receiver during the period from the last day upon which the taxpayer was required to file a return of the tax against which credit is claimed and June 30 next following such last day, inclusive. Such assets were also in the hands of the receiver during all the time subsequent to that period. Under section 602(b) of the Revenue Act of 1943, all limitations as to the time of payment, when the assets were in the hands of a receiver, were removed. The receiver was, therefore, at any time after his appointment, entitled to pay contributions for the years 1941 and 1942 to the State and was entitled to credit on the taxes due the Federal government for the amounts paid to the State, up to 90 per cent of the taxes due the Federal government, for both years.

This brings us to a consideration of cause No. 28490. This case presents the questions on a different factual record from that presented by the record in cause No. 28474. [fol. 66] This case is an appeal by the United States from a decree entered by the Circuit court of Cook county. The

appeal was also taken to the Appellate Court for the First District. On motion of appellee, the cause was transferred to this court on jurisdictional grounds.

The record shows that on January 9, 1939, Advertising Review Publishing Company made a general assignment of its assets and property to William Fisher, trustee, for the benefit of its creditors; that he had reduced the assets to cash and had remaining in his hands the net amount of $1253.11; that Carter H. Harrison, Collector of Internal Revenue, had filed claims with the trustee for capital stock tax and claims for taxes accruing under the Federal Unemployment Tax Act, aggregating more than the total amount of funds in the hands of the trustee. The Director of the Department of Labor of the State of Illinois also filed claims with the trustee for unemployment compensation contributions due the State of Illinois in the amount of $721.29, plus interest.

On February 11, 1942, Fisher, the trustee, filed his complaint in this cause in the nature of an interpleader, asking for instructions of the court as to the distribution of the funds in his hands. The Collector of Internal Revenue and the Director of the Department of Labor of the State of Illinois were both made parties defendant. On April 2, 1943, the Director filed his complaint in the circuit court in equity for the purpose of foreclosing his lien on the assets in the hands of the trustee for the unemployment compensation contributions due the State of Illinois. These two cases were thereafter consolidated. On order of the court, the funds in the hands of the trustee were impounded with the clerk of the court to abide the result of the suit. On motion and by leave granted, the United [fol. 67] States of America was substituted as a party to the suit in lieu of the Collector of Internal Revenue, and he was dismissed out of the case.

Upon a hearing, a decree was entered finding that the lien of the Director of Labor of the State of Illinois on the assets involved gave to him priority of payment to the extent of 90 per cent of the funds on deposit with the clerk and that the United States was entitled to priority of payment as to the remaining 10 per cent of said funds on deposit. From this decree the United States perfected the appeal.

The contention of appellee is that he was entitled to priority of payment to the extent of 81 per cent of the funds on deposit with the clerk under section 602(a) of the Revenue

Act of 1943. (26 U. S. C. 602(a).) Section 602(a), in so far as material to the present inquiry, is as follows:

"Section 602. Credit Again-- Federal Unemployment Taxes for Year 1936 to 1942.—(a) Allowance of Credit Against Tax for 1936, 1937, and 1938,—Against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, any taxpayer shall be allowed credit (if credit is not allowable under section 902 of such Act) for the amount of contributions paid by him into an unemployment fund under a State law—

"(1) Without regard to the date of payment, to the extent hereinafter provided in this subsection;

"(2) Without regard to the date of payment with respect to wages paid after September 19, 1939;

"(3) Without regard to the date of payment, if the assets of the taxpayer were, at any time during the period August 11, 1939, to October 8, 1939, inclusive, or the period October 9, 1940, to December 6, 1940, inclusive, or the period September 21, 1941, to November 18, 1941, inclusive, in [fol. 68] custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

"The provisions of the Social Security Act in force prior to February 11, 1939, (except the provision limiting the credit to amounts paid before the date of filing returns), shall apply to allowance of credit under this subsection; except that the amount of credit against the tax for the calendar year 1936, 1937, or 1938, for contributions paid after December 6, 1940, shall not (unless the credit is allowable on account of paragraph (2) or (3) exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid before the last day upon which the taxpayer was required under section 905 of such Act to file a return for such year."

As we construe this section, it only removes the restriction as to the time of payment of taxes on wages accrued in the years 1936, 1937, and 1938, in cases where the assets of the taxpayer were in the custody or control of a receiver, trustee or other fiduciary appointed by, or under the control of a court of competent jurisdiction, during the periods mentioned in paragraph (3) of subsection (a) of said sec-

tion 602. As so construed, it has no application to the facts in this case. The assets of the insolvent taxpayer were not in the custody or control of a receiver during any period mentioned in section 602(a) (3) of the Revenue Act of 1943. The taxes with which we are here concerned were not subject to the provisions of that section.

Appellant claims the right of priority of payment of the taxes due the United States because of the priority granted to the United States by section 3466 of the Revised Statutes of the United States (31 U. S. C. 191,) which reads as follows: "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, [fol. 69] in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

Appellee, in an effort to demonstrate that it was not the intention of Congress that claims for taxes due under the Federal Unemployment Tax Act should be subject to the priority of payment provisions of said section 3466, has presented an interesting and illustrative argument. He has analyzed and presented both the State and Federal acts and their relations to each other. It is pointed out that the Federal act is not in itself a complete unemployment compensation law; that it merely provides for the collection of payroll taxes, but makes no provision for the payment of unemployment compensation to employees; that this function is left entirely to the States. It is further pointed out that section 902 of the Social Security Act of 1935, which is section 1601 of the Internal Revenue Code of 1939, allowed a credit against the Federal taxes imposed for payments made into an approved State unemployment compensation fund to the extent of 90 per cent of the amount of the taxes due under the Federal act, if such payments were made to the State fund before the last due date of the Federal return of the employer; that the last due date of such return was January 31 of the year following that in which the wages were paid.

It is further pointed out that if payment of the State contributions was not made before the due date of the Federal return, and payment was made thereafter, but before June 30 next following such due date, a credit of 90 per cent [fol. 70] of the credit, or 81 per cent, is allowed; that if the assets of the taxpayer are in the custody or control of a court of competent jurisdiction at any time between the last due date of the return and June 30 following, this limitation is removed and the full credit of 90 per cent is allowed; that by the Revenue Act of 1940, such limitation on the time of the payment, in order to obtain the credit, was extended to December 6, 1940; that if the assets of the taxpayer were in the hands of a receiver at any time during the fifty-nine day period following December 6, 1940, and such State contributions were paid by the receiver during that time, he would be entitled to credit for the amount paid to the State, up to 90 per cent of the Federal taxes; that by the Revenue Acts of 1941 and 1943, this policy was continued and the limitations as to the time of payment, in order to obtain the credit, were further extended.

From this it is argued that the provisions relating to credits allowed on the Federal taxes for unemployment contributions paid to the State, up to 90 per cent of the taxes due the Federal government, were intended to encourage the employer to promptly pay his State contributions; that it was not contemplated by Congress in the enactment of this legislation that more than 10 per cent of the 3 per cent Federal payroll taxes should belong to the Federal government; that the purpose of Congress in providing that 10 per cent of the Federal taxes be paid to the Federal government, regardless of the amount which the txpayer might pay to the State, was to create a fund for the use of the Federal government in the administration of the Federal act and its supervision of the administration of the State acts by the several States.

From this it is said that in reality the Federal taxes are levied only for the purpose of co-ordinating the adminis- [fol. 71] tration of the acts of the several States with the Federal act, under the supervision of the National government. It is further contended that the primary purpose of the Federal act was to encourage the States to pass State unemployment compensation acts and to assist the States in the administration of such acts.

Upon this basis it is contended that it was the intention of Congress that the Federal taxes, except as to the amount of 3/10 of one per cent of the payrolls were, in fact, levied for the use and benefit of the States and that, other than the 10 per cent for which no credit can be taken for the payments into a State unemployment compensation fund, the Federal government has no interest therein; that such 10 per cent reserved to the Federal government is for the sole purpose of defraying the expenses of administering the acts.

This argument, however plausible and logical it may seem, loses sight of the fact that the taxes imposed by the Federal act at the rate of 3 per cent on the payrolls of those employers having eight or more employees, are taxes imposed by, and which belong to, the Federal government. All of the provisions pointed out concerning credits for taxes paid into the unemployment compensation fund of the State relate to the administration of the act. They are administrative in character. By the Federal act, taxes are levied at the rate of 3 per cent on the payroll of every employer in the United States employing eight or more persons. The act was sustained by the Supreme Court of the United States in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 57 S. Ct. 883, because the payments exacted thereunder were found to be taxes levied under the powers conferred on Congress by section 8 of article I of the constitution. Such payments were held to be excise taxes.

Under the act, therefore, excise taxes are levied by the Congress upon employers at the rate of 3 per cent of their payrolls. The fact that the act makes provision for a reduction in the amount of the taxes, or a surrender or waiver [fol. 72] of a portion thereof, equal to the amount paid by the taxpayer into an approved State unemployment compensation fund, up to 90 per cent of the taxes due, does not change the character of the act as one levying or imposing taxes. The full amount of 3 per cent of the payroll constitutes taxes due the Federal government. The waiver of a portion thereof for the purpose of encouraging employers to promptly pay their State unemployment compensation contributions does not change the character of payments exacted by the Federal act. In the first instance, 100 per cent of the taxes levied constitute taxes due the Federal government. The full amount continues to be taxes due the Federal government either until it is all paid

to the Federal government, or 90 per cent is paid to the State and the balance to the Federal government. The provisions of the act for credits equal to the amount paid to the State, up to 90 per cent of the taxes due the Federal government, being administrative in character, do not change the character of the taxes imposed. They are still taxes due the Federal government and constitute a debt due to the United States within the purview of section 3466 of the Revised Statutes.

The cases cited and relied upon by appellee are not in point. Those cases involved payments due the United States of an entirely different character from those here involved. *United States* v. *Guaranty Trust Co.* 280 U. S. 478, 50 S. Ct. 212, involved money due the United States under the Transportation Act of 1920.

Mellon v. *Michigan Trust Co.* 271 U. S. 236, 46 S. Ct. 511, involved a claim due the Director General of Railroads for transportation charges against an insolvent corporation. [fol. 73] In *United States* v. *Marxen*, 207 U. S. 200; 59 S. Ct. 811, the claim was for money due the Federal Housing Administrator. In neither of those cases was the claim for taxes due the United States.

It has been repeatedly held by the Supreme Court that taxes due the United States are debts due the United States, within the meaning of section 3466 of the Revised Statutes. *Price* v. *United States*, 269 U. S. 492, 46 S. Ct. 180; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 9 L. ed. 1017; *United States* v. *Bank of North Carolina*, 6 Pet. 29, 8 L. ed. 29.

Appellee also cites and relies on the case of *Rivard* v. *Bijou Furniture Co.* 67 R. I. 251, 21 Atl. 2d 563. It is true this case sustains the contentions of appellee. However, we think the court in that case overlooked the fact that taxes due under the Federal Unemployment Tax Act are taxes due the United States and, consequently, are debts due the United States within the scope of section 3466 of the Revised Statutes.

It is elementary that the priority given the United States by section 3466 cannot be impaired or superseded by State laws. *United States* v. *Oklahoma*, 261 U. S. 253, 67 L. ed. 638.

As to that part of appellant's claim in case No. 28474 which is for Federal insurance contribution taxes, such taxes are not subject to the credits allowed under section

602(b) of the Revenue Act of 1942. It follows that the claim of appellant in cause No. 28490 and that portion of appellant's claim in cause No. 28474 which is for Federal insurance contribution taxes were debts due the United States and were entitled to priority of payment out of the assets of the insolvent debtors, unless the State of Illinois had such a lien on such assets as would remove them [fol. 74] from the priority rights granted by section 3466 of the Revised Statutes.

It is claimed by appellee that he did have such a lien. This contention is based upon section 26(a) of the Unemployment Compensation Act of Illinois. (Ill. Rev. Stat. 1943, chap. 48, par. 243.) That section, in so far as material, reads as follows: "A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

It is contended by appellant that the lien given by this section of the statute is not a perfected, fixed lien; that at most it is merely an inchoate right to a lien. It will be remembered that the only thing done by the Director to establish or to enforce such lien, as against the property of the debtor, was the filing of this suit on April 2, 1943, whereas, the assignment was made by the insolvent debtor on January 9, 1939. The right to priority of payment under section 3466 attaches, if at all, at the time of the assignment.

In the very late case of *United States* v. *Waddill, Holland & Flinn*, in an opinion filed January 2, 1945, the Supreme Court of the United States had before it a similar question. (65 S. Ct. 304.) The case arose in Virginia. The debtor had made an assignment for the benefit of [fol. 75] creditors. Claims were made by the United States for unpaid taxes under the Federal Unemployment Tax Act and for a debt arising out of a Federal Housing Administration transaction. The landlord of the debtor, twelve days after the assignment was made, obtained a distress warrant,

which was levied on the debtor's property. The applicable provisions of the statutes of Virginia gave to the landlord the right to levy distress for six months rent upon "any goods of the lessee * * * found on the premises, or which may have been removed therefrom not more than thirty days * * * for not more than six months rent." The distraining landlord claimed a lien on the property of the debtor and a priority of payment over the claim of the Federal government, based upon the lien given him by statute on the goods of the insolvent debtor. The Supreme Court of Virginia held that the provisions of the statute of that State, referred to, "give the landlord a lien which is fixed and specific and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment which are merely remedies for enforcement." In disposing of that question, the Supreme Court of the United States said:

"The words of section 3466 are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States. Thelusson v. Smith, 2 Wheat. 396, 423, 4 L. Ed. 271; United States v. Texas, supra, 314 U. S. at page 484; 62 S. Ct. at page 352, 86 L. Ed. 356. But this court in the past has recognized that certain exceptions could be read into this statute. The question has not been expressly decided, however, as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency [fol. 76] or voluntary assignment. * * * It is within this suggested exception that the landlord and the municipality seek to bring themselves. Once again, however, we do not reach a decision as to whether such an exception is permissible for we do not believe that the asserted liens of the landlord and the municipality were sufficiently specific and perfected on the date of the voluntary assignment to cast any serious doubt on the priority of the claim of the United States. * * *

"The Supreme Court of Appeals of Virginia has here held that these sections 'give the landlord a lien which is fixed and specific, and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment, which are merely remedies for enforcing it.' 182 Va. at page 363, 28 S. E. 2d at page 746. It has also held that such a lien 'relates back to the beginning of the

tenancy,' 182 Va. at page 364, 28 S. E. 2d at page 746, thus giving it force and effect on date of the voluntary assignment. These interpretations of the Virginia statutes, as propositions of state law, are binding. But it is a matter of federal law as to whether a lien created by state statute is sufficiently specific and perfected to raise questions as to the applicability of the priority given the claims of the United States by an act of Congress. If the priority of the United States is ever to be displaced by local statutory lien, federal courts must be free to examine the lien's actual legal effect upon the parties. A state court's characterization of a lien as specific and perfected, however conclusive as a matter of state law, cannot operate by itself to impair or supercede a long-standing Congressional Declaration of priority. * * *

"Tested by its legal effect under Virginia law, the landlord's lien in this instance appeared to serve 'merely as a caveat of a more perfect lien to come.' People of State of New York v. Maclay, supra, 288 U. S. at page 294, 53 S. Ct. [fol. 77] at page 324, 77 L. Ed. 754. As of the date of the voluntary assignment, it was neither specific nor perfected. It gave the landlord only a general power over unspecified property rather than an actual interest in a definitive portion or portions thereof. * * *

"Nor was the statutory lien perfected as a matter of actual fact, regardless of how complete it may have been as a matter of state law. The tenant was divested of neither title nor possession by the silent existence of the landlord's statutory lien on the date of the assignment. Only after the lien was actually asserted and an attachment or a distraint levied, enabling the landlord to satisfy his claim out of the seized goods, could it be argued that such goods severed themselves from the general and free assets of the tenant from which the claims of the United States were entitled to priority of payment. Prior to that time the lien operated to do no more than prevent the removal of goods from the premises by certain classes of persons, Va. Code par. 5524, and give the landlord priority in distribution under state law provided that the goods remained on the premises. Such a potential, inchoate lien could not disturb the clear command of section 3466 of the Revised Statutes. Something more than a 'caveat of a more perfect lien to come' was necessary."

It seems to us that the above language of the court is conclusive in this case. We are forced to the conclusion that the taxes due the Federal government were debts due the United States within the purview of section 466 of the Revised Statutes. It is equally clear that appellee did not have such a lien upon assets of the insolvent debtor, under section 26(a) of the Unemployment Compensation Act of Illinois, as to give him priority of payment over the claim [fols. 78-79] of the Federal government for Federal insurance contribution taxes in cause No. 28474, or the claim of appellant in cause No. 28490. In view of this, appellant was entitled to priority of payment over the claim of the State of Illinois.

In cause No. 28474, the judgment of the circuit court is reversed and the cause is remanded to that court, with directions to enter an order directing the payment of the funds on deposit first to appellant for that portion of his claim which is for Federal insurance contribution taxes, with lawful interest thereon, and any balance remaining to the Director of the Department of Labor of the State of Illinois. The order will provide that the amount paid to the Director be credited on the claim of appellant against the insolvent debtor for unemployment compensation taxes.

In cause No. 28490, the decree of the circuit court is reversed and the cause is remanded to that court, with directions to enter a decree finding that the United States is entitled to priority of payment to the extent of the funds on deposit, and ordering distribution accordingly.

Reversed and remanded, with directions.

[fols. 80-81] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER RECALLING AND STAYING MANDATE—Filed October 17, 1945

Upon motion of appellee, it is ordered that the mandate in the above entitled cause be recalled and stayed until December 16, 1945.

Enter:

(S.) Francis S. Wilson, Justice of the Illinois Supreme Court.

October 16, 1945.

[fol. 82] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

PRAECIPE FOR RECORD FOR USE ON APPLICATION TO THE SUPREME COURT OF THE UNITED STATES FOR WRIT OF CERTIORARI—Filed December 5, 1945

The appellee in the above entitled cause hereby requests and directs you to prepare and duly certify a transcript of record in the above entitled cause and to include therein copies only of the following items:

1. Appellant's abstract of record.
2. Original opinion of the court, filed May 23, 1945.
3. Judgment of this court.
4. Notice of intention to file petition for rehearing.
5. Petition for rehearing.
6. Order denying petition for rehearing, with modifications.

[fol. 83] 7. Final opinion, including modifications ordered at the time of the denial of the petition for rehearing, filed September 17, 1945.

8. Second judgment rendered September 17, 1945, (if such judgment appears of record).

9. Order re stay of mandate.

10. Heading of Argument I, which appears in bold face on page 6 of Appellee's Brief, in the Illinois Supreme Court.

11. Heading of Argument III, which appears in bold face on page 29 of Appellee's Brief, in the Illinois Supreme Court.

12. This praecipe for record, with proof of service.

13. Clerk's certificate.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Appellee.

Proof of Service

Received a copy of the above and foregoing Praecipe for Record and proof of service thereof, this 4th day of December, A. D. 1945.

J. Albert Woll, Attorney for Appellant, United States Attorney.

[fol. 84] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 85] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 16th, 1946.

Frank Murphy, Associate Justice of the Supreme Court of the United States.

Dated this 4th day of December, 1945.

[fol. 86] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 25, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945.

No. _____

PEOPLE OF THE STATE OF ILLINOIS, ex rel.
ROBERT L. GORDON, Director of Labor,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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208 South LaSalle St., Chicago 4, Ill.
Attorney for Petitioner.

ALBERT E. HASSETT,
WILLIAM C. WINES,
Assistants Attorney General,
Of Counsel.

CHAMPLIN PRESS COMPANY, CHICAGO 365

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945.

No.

PEOPLE OF THE STATE OF ILLINOIS, ex rel.
ROBERT L. GORDON, Director of Labor,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

This is a petition by the State of Illinois for this court's writ of *certiorari* to review a judgment and opinion of the Supreme Court of Illinois, rendered in this cause on September 17, 1945. The Supreme Court of Illinois consolidated this case with a companion case which presented similar but not identical issues. *Certiorari* is concurrently being sought in the companion case by separate application under the title "*People of the State of Illinois ex rel. Rob-*

ert L. Gordon, Director of Labor, Petitioner, v. *Nigel D. Campbell, Collector of Internal Revenue.*" That case involves two additional issues not present in the instant case.

A.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

As more fully appears from the formal Statement of Questions Presented, required by this court's rules and appearing *infra*, pages 6-7, this case and the above entitled companion case present two important questions, decided in favor of the United States Government by the Supreme Court of Illinois. The first of these issues has been decided adversely to the United States Government by the Supreme Court of Rhode Island in the case of *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563; 68 R. I. 358, 27 Atl. (2d) 853, in an opinion which the Supreme Court of Illinois expressly recognized as in point but declined to follow. These questions may be briefly stated as follows:

In view of the intent of Congress as manifested in the Social Security Act and related legislation, does section 3466 of the Revised Statutes of the United States (Appendix, *infra*, p. 25) apply to give a claim of the United States for Social Security excise taxes and Capital Stock Taxes priority over the claim of a state for Unemployment Compensation contributions when such contributions are exacted under a state statute adopted in accordance with the Congressional policy evinced by the Federal Act?

Was the claim of the State of Illinois for Unemployment Compensation contributions a secured claim and

consequently entitled to priority over the unsecured claim of the United States for Social Security excise taxes and capital stock taxes?

Because of the nationwide scope of the Federal Social Security Act and the State Social Security laws enacted by the forty-eight states as integral parts of the Federal program thereby established, these questions are of great importance not only to the State of Illinois and all employees within this state but to all states and all employees and to the Federal Government. This is particularly true at the present time in view of the current unsettled employment situation prevailing throughout the country which throws an unprecedented burden upon the resources of the several states.

These questions emerge from facts which are not in dispute and which are briefly stated as follows:

On January 9, 1939, the Advertising Review Publishing Company, a corporation, made an assignment for the benefit of its creditors to William Fisher, Trustee, who reduced the assets of the corporation to cash (R. 1-2). The Collector of Internal Revenue filed claims with the Trustee for capital stock taxes in the sum of $58.73, plus interest, taxes under Title VIII of the Social Security Act in the sum of $1,065.52, plus interest, and taxes under Title IX of the Social Security Act in the sum of $1,284.36, plus interest. The Director of Labor of the State of Illinois filed a claim for unemployment compensation contributions in the sum of $721.29, plus interest at the rate of one per cent a month (R. 2-3).

On February 11, 1942 the Trustee filed a complaint in interpleader in the Circuit Court of Cook County, Illinois, setting out the foregoing facts and requesting instructions from the Court as to the distribution of the funds in his

hands. The Director of Labor and the Collector of Internal Revenue were made defendants (R. 1-4). By stipulation, the United States was made a party defendant and the Collector of Internal Revenue was dismissed (R. 4-5).

The United States filed its answer to the complaint of the Trustee and alleged that its tax claims were entitled to priority of payment under Section 3466 of the United States Revised Statutes (R. 6, 8). On April 2, 1943, the Director of Labor filed a complaint in the Circuit Court of Cook County, Illinois, to foreclose his statutory lien for unemployment compensation contributions. The allegations of the complaint may be summarized as follows:

The Advertising Review Publishing Company, a corporation, hereinafter referred to as the debtor, was an employer, subject to the Illinois Unemployment Compensation Act (R. 8-9). It became indebted to the Director of Labor in the sum of $1,054.91 for contributions and interest due under the Act (R. 10). It admitted its indebtedness to the Director, and its liability for the said contributions and the amount thereof were based upon reports it had filed with the Director of Labor (R. 10). Section 26(a) of the Illinois Unemployment Compensation Act created a lien in favor of the Director for a sum equal to the amount of contributions, interest and penalties due from the said debtor. Such lien attached to the personal property or rights used by the debtor in connection with its business (R. 10-11). Notice of the said lien was filed by the Director on March 23, 1943 in the Office of the Recorder of Deeds, Cook County, Illinois (R. 11, 15, 16). The Director contended that his lien was paramount to the claims of the United States (R. 12-13).[1]

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[1] The provisions of the Illinois Unemployment Compensation Act relating to the lien of the Director are set forth in the Appendix *infra*, pp. 35-39.

The two cases were consolidated in the Circuit Court of Cook County, Illinois (R. 16). By order of said Court the funds in the hands of the Trustee, amounting to $1,010.81, were deposited with the Clerk of the Circuit Court of Cook County, Illinois (R. 19). The Court later entered an order that the lien of the Director be given priority to the extent of 90 per cent of the funds on deposit with the Clerk of the Circuit Court and that the United States have priority as to the ten per cent remaining (R. 19).

In the Supreme Court of Illinois, due to the similarity of certain issues, the case at bar was consolidated for opinion with the case of *The People, For the Use of Francis B. Murphy, Director of Labor, Appellee*, v. *The Chicago Waste & Textile Company, et al.—(Carter H. Harrison, Collector of Internal Revenue, Appellant)*—No. 28474. Since the facts in the two cases are dissimilar and the case at bar presents fewer issues, separate petitions are being submitted to this Court. In its opinion of May 23, 1945 the Supreme Court of Illinois denied petitioner's contentions and held that the claim of the United States was entitled to priority over the claim of the Director (R. 25-33). A petition for rehearing was filed, which was denied on September 17, 1945 (R. 40).

B.

JURISDICTION.

The judgment of the Supreme Court of Illinois, which was entered on May 23, 1945, became final on September 17, 1945 upon the denial of the petition for rehearing. The time for filing this petition and brief in support thereof was extended by this Court to January 16, 1946 (R. 56). The jurisdiction of this Court is invoked under Section

237(b) of the Judicial Code, as amended by the Act of February 13, 1925.

The court below held that under Section 3466 of the United States Revised Statutes the claim of the United States were entitled to priority over the claim of the petitioner for unemployment compensation contributions (R. 44-54). The applicability of Section 3466 was raised in every stage of the proceedings below. It was raised in the Circuit Court of Cook County, Illinois, by the answer and counterclaim of the United States to the complaint of the Trustee (R. 6, 8), and by the suit brought by the Director to foreclose his lien for unemployment compensation contributions (R. 12-13). The Circuit Court of Cook County in effect decided against the contention of the United States (R. 19). Priority under Section 3466 was again raised by the United States in its brief before the Illinois Supreme Court and denied and answered by the Director in his brief (R. 20). The Supreme Court of Illinois passed upon the question and specifically allowed priority under Section 3466 to the claims of the United States (R. 41-54).

The questions presented are of substance, as will more fully appear under the reasons for granting the writ.

C.

THE QUESTIONS PRESENTED.

1. In view of the intent of Congress as manifested in the Social Security Act and related legislation, does section 3466 of the Revised Statutes of the United States apply to give a claim of the United States for Social Security excise taxes and Capital Stock taxes priority over the claim of a state for Unemployment Compensation contributions when such contributions are exacted under a state statute

adopted in accordance with the congressional policy evinced by the Federal act?

2. Was the claim of the State of Illinois for Unemployment Compensation contributions a secured claim and consequently entitled to priority over the unsecured claim of the United States for Social Security excise taxes and Capital Stock taxes?

D.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The court below has decided Federal questions of substance not heretofore precisely determined by this Court, and has expressly recognized that its decision is in direct conflict with the decision of a court of last resort of a sister state.

Issues of the utmost importance to the Federal government and to all of the states are involved in this petition for review. Every state in the Union now has an unemployment compensation system which was established as a result of the enactment of Titles III and IX of the Social Security Act. As will be demonstrated in the accompanying brief, said Titles III and IX and every state unemployment compensation system are part and parcel of a national plan to promote the general welfare of the United States and to serve the fiscal needs of the Federal treasury. The contributions which the states collect under their unemployment compensation laws, and which are retained until needed in a separate trust fund in the treasury of the United States, are used solely for the purpose of paying benefits to unemployed workers, thereby sustaining the national burden of unemployment and relieving the Fed-

eral treasury of the terrific drains made upon it by unemployment relief. *Steward Machine Company* v. *Davis*, 301 U. S. 548, 574-576, 586-591.

It is, therefore, of paramount importance to determine whether the priority of the United States under Section 3466 may be invoked over the claim of a state for unemployment compensation contributions when such contributions are used solely to effectuate a clear Federal purpose, which Congress has unmistakably indicated is best served by the payment of contributions into state unemployment compensation funds. *Steward Machine Company* v. *Davis*, *supra*, p. 589. The issue has arisen in other states and will, undoubtedly, continue to be a subject of controversy until resolved by this Court. A conflict already exists between the decisions of the highest courts of Illinois and Rhode Island.

In *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 358, 27 Atl. (2d) 853, which involved the claim of the State of Rhode Island for unemployment compensation contributions and the claim of the United States for Federal insurance contributions and capital stock taxes, the Supreme Court of Rhode Island held that the claim of the State for unemployment compensation contributions was excluded from the purview of Section 3466. Since all state unemployment compensation laws have common objectives, there is no warrant for holding Section 3466 applicable in one state and inapplicable in another state. Uniformity of decision is essential. A final adjudication by this Court would be equally in the interests of the Federal government. It is, therefore, respectfully submitted that this case raises an issue of a very substantial nature which can be determined authoritatively only by this Court.

2. The court below has decided Federal questions of substance not in accord with applicable principles enunciated by this Court. The holding of the court below that Section 3466 is applicable to the claim of a state for unemployment compensation contributions is in conflict with the principles expressed by this Court in *Steward Machine Company* v. *Davis*, 301 U. S. 548; *United States* v. *Marxen*, 307 U. S. 200; *United States* v. *Guaranty Trust Company of New York*, 280 U. S. 478; *Mellon* v. *Michigan Trust Company*, 271 U. S. 236; *Cook County National Bank* v. *United States*, 107 U. S. 445.

The foregoing reasons for granting the writ are fully developed in the accompanying brief.

E.

CONCLUSION.

For the reasons above stated, petitioner prays that this petition for a writ of *certiorari* be granted, and that this Court's writ of *certiorari* issue to the Supreme Court of Illinois for the purpose of reviewing the questions hereinbefore specified.

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Attorney for Petitioner.

ALBERT E. HALLETT,
WILLIAM C. WINES,
Assistants Attorney General,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THE OPINION OF THE COURT BELOW.

The order of the Circuit Court of Cook County, Illinois, was entered without an opinion (R. 19). The opinion of the Supreme Court of Illinois (R. 41-54) is reported in 391 Ill. 29, 62 N. E. (2d) 537.

JURISDICTION.

The statement concerning jurisdiction is set forth in the Petition (*supra*, pp. 5-6) and is incorporated herein by reference.

STATEMENT.

The statement of the case appears in the Petition (*supra*, pp. 2-5) and is incorporated herein by reference. There is no dispute concerning the facts involved.

SPECIFICATION OF ERRORS TO BE URGED.[2]

The Supreme Court of Illinois erred:

1. In holding that the claims of the United States were entitled to priority under Section 3466 of the United States Revised Statutes over the claim of the petitioner for unemployment compensation contributions.

2. In failing to hold that petitioner's secured claim was entitled to priority over the unsecured claims of the United States.

---

[2] The Supreme Court of Illinois also erred in its interpretation of Section 602(a)(1) of the Revenue Act of 1943 (R. 46-47). Its interpretation is contrary to that of the Federal government itself and of the Senate Committee which drafted the legislation. (Article 211 of Regulation 90 as amended by T. D. 5383, C. C. H. Unemployment Insurance Service, Vol. 1, pp. 2040-2041, 2046.) The obvious misconstruction of Section 602(a)(1) of the Revenue Act of 1943 by the court below is, however, not being urged for the following reason: Petitioner raised the issue as to the applicability of said Section 602(a)(1) in his petition for rehearing only because in its original opinion of May 23, 1945 in the case of *The People, For the Use of Francis B. Murphy, Director of Labor, Appellee,* v. *The Chicago Waste and Textile Company, et al.*—(*Carter H. Harrison, Collector of Internal Revenue, Appellant*) No. 28474, which was consolidated for opinion with the case at bar, the Supreme Court of Illinois held that due to the provisions of Section 602(b) of the Revenue Act of 1943 the petitioner was entitled to the entire amount on deposit with the Clerk of the Circuit Court of Cook County, Illinois.

In its final opinion of September 17, 1945, the Supreme Court of Illinois held in the said companion case that Section 602(b) was only applicable as to taxes arising under Title IX of the Social Security Act and that the United States was entitled to priority under Section 3466 as to that portion of its claim for taxes arising under Title VIII of the Social Security Act. The issue as to the application and construction of said Section 602(a)(1) in the case at bar is, therefore, no longer a moot one, since the payment of the claim of the United States for taxes under Title VIII of the Social Security Act would, if allowed, exhaust the entire funds on deposit with the Clerk of the Circuit Court.

ARGUMENT.

I.

IN VIEW OF THE INTENT OF CONGRESS AS MANIFESTED IN THE SOCIAL SECURITY ACT AND RELATED LEGISLATION, SECTION 3466 OF THE REVISED STATUTES IS NOT APPLICABLE TO GIVE A CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES AND CAPITAL STOCK TAXES PRIORITY OVER THE CLAIM OF A STATE FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS, WHEN SUCH CONTRIBUTIONS ARE EXACTED UNDER A STATE STATUTE ADOPTED IN ACCORDANCE WITH THE CONGRESSIONAL POLICY EVINCED BY THE FEDERAL ACT.

This Court has repeatedly held that it will not apply Section 3466 where the concept of Federal priority is inconsistent with the intention of Congress, as manifested in other statutes. *United States* v. *Marxen*, 307 U. S. 200; *United States* v. *Guaranty Trust Company of New York*, 280 U. S. 478; *Mellon* v. *Michigan Trust Company*, 271 U. S. 236; *Cook County National Bank* v. *United States*, 107 U. S. 445. In each of the foregoing cases this Court held that, because of the nature of the legislation involved therein, Congress intended that the United States should not have priority under Section 3466.

The petitioner's claim for unemployment compensation contributions is predicated on a law which, like all other state unemployment compensation statutes, was enacted in furtherance of a paramount Federal policy. The character and origin of petitioner's claim stem from Title IX

of the Social Security Act. The purpose of Title IX, as we shall show, was to create a national program of unemployment insurance by inducing every state in the Union to establish a system of unemployment insurance which would meet the minimum standards imposed by Congress. Through the agency of each state, Congress sought the imposition and collection of contributions to be used in the payment of benefits to unemployed workers. Such action by the states was deemed essential in order to promote the general welfare of the nation and to serve the fiscal needs of the Federal treasury by relieving it of the terrific drains made upon it by unemployment relief. *Steward Machine Company* v. *Davis*, 301 U. S. 548, 586-589, 591.

Although petitioner's claim for unemployment compensation contributions has been referred to as a claim of the state, it is in reality a claim of the nation. In its relation to the welfare of the country and the needs of the Federal treasury, it is, unquestionably, tantamount to a claim of the United States. That Congress deemed the raising of revenue through the states for the relief of the unemployed to be of such tremendous national importance as to bar the application of Section 3466 is incisively demonstrated by (1) the exigencies which gave rise to a national program of unemployment insurance; (2) the provisions of Titles III, VII and IX of the Social Security Act; (3) the amendments to Title IX; (4) related legislation of Congress.

1. The Critical Conditions Which Gave Rise to a National Program of Unemployment Insurance.

These exigencies have been pertinently and graphically described by this Court. In *Steward Machine Company* v. *Davis*, *supra*, pp. 586-588, which involved the constitutionality of Title IX, this Court declared:

"* * * there is need to remind ourselves of facts as to the problem of unemployment. * * * During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. Often the average was more than ten million; at times a peak was attained of sixteen million or more. Disaster to the breadwinner meant disaster to dependents. * * * The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare. Cf. *United States* v. *Butler*, 297 U. S. 1, 65, 66, *Helvering* v. *Davis*, decided herewith. The nation responded to the call of the distressed. Between January 1, 1933 and July 1, 1936, the states * * * incurred obligations of $689,291,802 for emergency relief; local subdivisions an additional $775,675,366. In the same period the obligations for emergency relief incurred by the national government were $2,929,307,125, or twice the obligations of states and local agencies combined. According to the President's budget message for the fiscal year 1938, the national government expended for public works and unemployment relief for the three fiscal years 1934, 1935 and 1936, the stupendous total of $8,681,000,000. The parens patriae has many reasons—fiscal and economic as well as social and moral—for planning to mitigate disasters that bring these burdens in their train. * * * insofar as there was failure by the states to contribute relief according to the measure of their capacity, a disproportionate burden, and a mountainous one, was laid upon the resources of the Government of the nation."

In *Helvering* v. *Davis*, 301 U. S. 619, 641, which involved an attack upon the constitutionality of Titles II and VIII of the Social Security Act (Old Age Benefits), this Court stated:

> * * * The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. * * * Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the *Steward Machine Co., supra*, has set the doubt at rest. * * *"

The national scope of the problem of unemployment was stressed by the President of the United States in his message to Congress on June 8, 1934[3] wherein he declared: "We are compelled to employ the active interests of the nation as a whole through government in order to encourage a greater security for each individual who composes it. * * * If, as our Constitution tells us, the Federal government was established, among other things, 'to promote the general welfare' it is our plain duty to provide for that security upon which welfare depends. * * *"

Both branches of Congress emphasized that unemployment relief posed the most serious question for the nation.[4]

2. Title IX of the Social Security Act.

To cope with the problem, Congress enacted Titles III, VII and IX of the Social Security Act (Appendix, *infra*, pp. 25-35). Briefly, Title IX provides that every employer (with stated exceptions) of eight or more workers is to pay an annual excise tax, measured by wages. The taxpayer, however, is allowed a credit against the Federal tax for the amount of contributions paid into an unemploy-

[3] Cong. Rec. Vol. 78, Pt. 10, p. 10770.

[4] Senate Report No. 628, 74th Congress, 1st Session, p. 10; House Report No. 615, 74th Congress, 1st Session, p. 7.

ment compensation fund established under a state law, said credit not to exceed 90 per cent of the Federal tax.[5] Such credit is allowable only if the state law is periodically certified by the Social Security Board to the Secretary of the Treasury as satisfying certain minimum criteria (Appendix, *infra*, pp. 30-31). Among these criteria, which will shortly be considered, is the requirement that the state law provide that the contributions paid into the state fund be promptly paid over to the Secretary of the Treasury to the credit of the "Unemployment Trust Fund." The Secretary of the Treasury is directed to invest the funds (except such portion as is, in his opinion, required to meet current withdrawals) in government securities. He is directed to pay out of the fund, to any competent agency, such sums as it shall duly requisition from the amount standing to its credit. The money withdrawn from the Unemployment Trust Fund by the state agency must be used solely for the payment of unemployment compensation benefits.

The plain purpose of the credit is to build up an adequate fund through the payment of contributions into state unemployment compensation systems, thereby sustaining the national burden of unemployment and safeguarding the Federal treasury. To the extent that taxpayers make contributions to a state unemployment compensation fund, the drain upon the Federal treasury is diminished. *Steward Machine Company* v. *Davis*, *supra*, pp. 589-591. The Federal tax and the credit are "approximate equivalents." *Steward Machine Company* v. *Davis; supra*, p. 591. The needs of the Federal treasury can be cared for as well by payments of unemployment compensation contributions

[5] The remaining 10 per cent is used in covering the costs of administering the State unemployment compensation systems. See *infra*, p. 18.

to the states as by payment of taxes to the United States. *Rivard, et al.* v. *Bijou Furniture Company*, 68 R. I. 358, 361, 27 Atl. (2d) 853, 855. That these principles were uppermost in the mind of Congress in extending the credit is apparent from an examination of the reports of both the Senate Finance Committee and the House Committee on Ways and Means.[6] Moreover, Congress believed that the general welfare of the country would be better served by the payment of contributions into state unemployment compensation funds than by the payment of the tax to the Federal government. *Steward Machine Company* v. *Davis*, *supra*, p. 589.

As indicated, Title IX sets out certain criteria which the state law must satisfy before the taxpayer, who pays contributions under such a law, may avail himself of the credit. These criteria are manifestly designed to promote the fiscal policy of the Federal government by insuring that the state law under which the taxpayer makes his contributions is a genuine and workable unemployment insurance measure. If the state statute were merely masquerading as an unemployment compensation law and had been enacted to take advantage of the credit for some foreign purpose, the Federal fiscal policies which the credit is calculated to serve would be frustrated. *Steward Machine Company* v. *Davis*, *supra*, p. 593.

3. Titles III and VII of the Social Security Act.

To further encourage the states to establish unemployment compensation systems, Congress, in Title III of the Social Security Act, provided for grants to cover the administrative costs of such systems (Appendix, *infra*, pp.

[6] Senate Report No. 628, 74th Congress, 1st Session, p. 15; House Report No. 615, 74th Congress, 1st Session, p. 16.

25-28. The funds for such grants are derived from the 10 per cent of the Federal tax which the Government retains for the purpose of meeting the costs of administering the state unemployment compensation systems.[7] However, as in Title IX, the state unemployment compensation laws are required to meet certain minimum criteria, intended to advance the fiscal policy of the United States (Appendix, *infra*, pp. 26-28).

That Congress assumed responsibility for the successful operation of the state unemployment compensation systems is evidenced not only by the standards which it prescribed in Titles III and IX and by its supervision of the "Unemployment Trust Fund" but also by the control which it has exercised through the activities of the Social Security Board which it created under Title VII of the Social Security Act (Appendix, *infra*, pp. 28-29). Through the Social Security Board, Congress has continuously reviewed state unemployment compensation legislation and administration to assure conformity with Federal standards, has determined and granted the amount of funds necessary for proper administration of State unemployment compensation systems, has guided the states in improving their legislation and administration, and has engaged in research designed to analyze the character of the problem of unemployment and to serve as a basis for

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[7] Message of the President to Congress, January 17, 1935, Cong. Rec., Vol. 79, Pt. 1, p. 546; Hearings before the Senate Committee on Finance on S. 1130, 74th Cong., 1st Session, p. 112; Report of the President's Committee on Economic Security, p. 19; House Report No. 1855, 78th Congress, 2nd Session, p. 27; P. Douglas, Social Security in the United States (1936), pp. 146-148. "* * * administrative costs, if we judge from German and English experience, are likely to equal one-ninth of the benefits or one-tenth of the total costs. See my Standards of Unemployment Insurance, pp. 122-123. It was not by accident, therefore, but rather from the very structure of unemployment insurance itself that the federal government was authorized in Title IX to retain one-tenth of the tax on payrolls instead of for example one-twentieth or, as in the federal inheritance tax, two-tenths." Social Security in the United States, *supra*, footnote, p. 147.

the revision of legislation and administrative techniques dealing with that problem.[8]

4. Amendments to Title IX of the Social Security Act.

It must be emphasized that Title IX of the Social Security Act does not establish a system of unemployment compensation. No provision is made therein for the payment of benefits to unemployed persons. By the credit provisions in Title IX and the grants for administrative purposes in Title III, the States were induced to set up unemployment compensation systems to promote the general welfare of the Nation and to serve the fiscal needs of the Federal Treasury.

The heart of the unemployment compensation program is in the benefits which are paid by the States to unemployed workers and in the contributions which are collected by the States for the payment of such benefits. Time and time again, Congress has demonstrated that it is the payment of contributions to the States which advances the fiscal purposes of the Federal government. Although the credit against the Federal tax was originally allowed only if contributions to State funds were paid within a specified period of time, Congress has repeatedly amended Title IX so as to extend the credit to taxpayers who are delinquent in the payment of contributions, in order to induce them to pay their contributions to the States.[9]

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[8] The Social Security Board, Eighth American Scientific Congress, May 10-18, 1940.

[9] Section 1601, Internal Revenue Act of 1939; Section 701, Second Revenue Act of 1940; Section 701, Revenue Act of 1941; Section 602, Revenue Act of 1943.

5. Related Legislation.

The Social Security Act became law on August 14, 1935. The payment of Federal taxes under Title IX commenced in 1936. A number of the States did not enact their unemployment compensation laws until sometime later. In the meantime, the employers in such States, who were subject to the Federal tax, paid the full amount of the tax to the National government. The intention of Congress to achieve the purposes of Title IX through the payment of contributions into State unemployment compensation systems rather than through the payment of taxes to the Federal government is strikingly revealed in its action, in which it turned over 90 per cent of the taxes collected from the foregoing employers to the State unemployment compensation systems which had been established subsequent to the initial payment of Federal taxes under Title IX.[10]

There is still further proof, if need be, of the deep concern which Congress has manifested in the maintenance and growth of State unemployment compensation funds. Congress has fully recognized that such funds would play a major role during the period of post-war readjustment and would serve as the first line of defense for the millions of workers employed in war industries who would be laid off and unemployed during industry's reconversion and readjustment to peace-time production. The Senate and the House appointed Special Committees on Post-war Economic Policy and Planning, which held extensive hearings on the problem of unemployment compen-

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[10] Public Act 353, Ch. 755, 50 Stat. 754; Second Deficiency Appropriation Act 1938, Ch. 681, 52 Stat. 1148.

sation in the post-war period.[11] Interviews with representatives of important government and private agencies on post-war problems and plans disclosed that "The fear of unemployment after the war colors the thinking of all the agencies interviewed. Those concerned with the labor problems give it first rank in their planning."[12] As a result of the recommendations of the said Special Committees on Post-war Economic Policy and Planning,[13] Congress enacted legislation guaranteeing the solvency of State unemployment compensation funds.[14]

In view of the tremendous importance which Congress attached to the accumulation of unemployment compensation contributions by the States, it is inconceivable that Congress expected or desired the collection of such contributions to be impaired or jeopardized by the invocation of Section 3466. On the contrary, the legislative purposes underlying Titles III, VII and IX of the Social Security Act reflect an intention on the part of Congress to subordinate the operation of Section 3466 to the paramount interest of insuring the success of the National program of unemployment relief.

In holding that the claim of the petitioner was subordinate to the claims of the United States for capital stock tax and for taxes arising under Titles VIII and IX of the Social Security Act, the Supreme Court of Illinois looked to form, not substance, and disregarded the character and significance of petitioner's claim. In the light of what

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[11] Hearings before the Special Committee on Post-war Economic Policy and Planning, United States Senate, 78th Congress, Second Session, part 3, Unemployment Compensation; Hearings before the Special Committee on Post-war Economic Policy and Planning, House of Representatives, 78th Congress, Second Session, Parts 2 and 3, Economic Problems of the Transition Period.

[12] Senate Document No. 106, 78th Congress, 1st Session, p. 79.

[13] Senate Report No. 539, part 5, 78th Congress, 2nd Session, p. 6; House Report No. 1855, 78th Congress, 2nd Session, pp. 27-28.

[14] War Mobilization and Reconversion Act (50 U. S. C. A. App. 1667); Senate Report No. 565, 79th Congress, 1st Session, p. 2.

has already been said, it is unnecessary to labor the point that petitioner's claim serves a Federal purpose, that it is tantamount to a claim of the United States, and that it stems from Title IX of the Social Security Act.

Both Titles VIII and IX are parts of the same Act and are designed to effectuate a common purpose—the general welfare of the United States. "The ill is all one, or at least not greatly different whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when journey's end is near." *Helvering v. Davis, supra*, p. 641. Congress deemed unemployment "an even more prevalent cause of dependency than old age; in fact * * * the most serious of all hazards confronting industrial workers. * * *"[15] Obviously, Congress did not intend that a claim for unemployment compensation contributions should be subordinated to a claim for taxes for old-age security.

It is important to note that in its oral argument before this Court in *Steward Machine Company v. Davis, supra*, p. 559, the United States contended that in imposing and collecting contributions under their unemployment compensation laws, the states were raising revenue for the general welfare of the United States; that the framers of the Constitution contemplated three different methods of raising revenue for the general welfare of the nation. "The first was direct Federal taxation collected by Federal officers. The second was that the Federal government lay the tax but the collection be by the state officers. The third method is that the states raise the revenue for the general welfare of the United States."

[15] House Report No. 615, 74th Congress, 1st Session, page 7; Senate Report No. 628, 74th Congress, 1st Session, page 10.

To invoke Section 3466 on the grounds that the revenue for unemployment relief is raised by the states instead of the Federal government, is totally devoid of merit and utterly foreign to the spirit and purpose of the Social Security Act. The clear-cut purpose and intention of Congress to treat unemployment relief as a Federal obligation and to assume the responsibility for the success of the unemployment compensation systems initiated under Title IX of the Social Security Act is not to be defeated by the sophistry of treating a claim for unemployment compensation contributions as a state claim as distinguished from a Federal claim.

II.

THE CLAIM OF THE STATE OF ILLINOIS FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS WAS A SECURED CLAIM AND CONSEQUENTLY WAS ENTITLED TO PRIORITY OVER THE UNSECURED CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES AND CAPITAL STOCK TAXES.

The claim of the United States to priority is based solely on Section 3466. The foregoing arguments conclusively demonstrate that no such priority exists. In *Rivard* v. *Bijou Furniture Company*, *supra*, the Supreme Court of Rhode Island held that, since Section 3466 was inapplicable, the claim of the State for unemployment compensation contributions and the claims of the United States for capital stock tax and Federal insurance contributions were entitled to parity. However, the Supreme Court of Rhode Island specifically noted in its opinion that no liens were involved (67 R. I. 253, 21 Atl. (2nd) 565).

In that respect the case at bar is distinguishable from the *Rivard* case, *supra*. In the case at bar the United

States did not contend, nor is there any evidence in the record to indicate, that its claims were secured by a lien. On the other hand, the record shows that the claim of the petitioner was secured by a lien which had attached to all of the personal property or rights used by the debtor in connection with its business (R. 10-11). The debtor was a corporation and could only own such personal property as was appropriate for the transaction of its business. Ch. 32, Sec. 157.5(d), Ill. Rev. Stat., 1943; *Bixler* v. *Summerfield*, 195 Ill. 147, 153; *People* v. *Chicago Gas Trust Company*, 130 Ill. 268, 287. In the absence of any evidence to the contrary it is, of course, to be presumed that the personal property which the debtor transferred to the trustee was the property which the debtor had used in connection with its business. The rule is well settled that the trustee took such property subject to the lien of the petitioner. *Hooven etc.* v. *Burdette*, 153 Ill. 672, 679.

It is, therefore, respectfully submitted that the petitioner's secured claim is entitled to preference over the unsecured claims of the United States.

CONCLUSION.

For the reasons above stated, petitioner prays that this petition for a writ of *certiorari* be granted and that this Court's writ of *certiorari* issue to the Supreme Court of Illinois for the purpose of reviewing the questions hereinbefore specified.

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APPENDIX.

SECTION 3466 OF THE REVISED STATUTES OF THE UNITED STATES.
(31 U. S. C. A. 191).

Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

THE SOCIAL SECURITY ACT.
Ch. 531, 49 Stat. 620.

* * * * * * *

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION.

Appropriation.

Section 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

Payments to States.

Sec. 302(a). The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws.

Sec. 303 (a). The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

* * * * * *

TITLE VII—SOCIAL SECURITY BOARD.

Establishment.

SEC. 701. There is hereby established a Social Security Board (in this Act referred to as the "Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of $10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

Duties Of Social Security Board.

Sec. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance and as to legislation and matters of administrative policy, concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

Expenses Of The Board.

Section 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

Reports.

Sec. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

* * * * * *

TITLE IX—TAX ON EMPLOYERS OF EIGHT OR MORE

Imposition Of Tax.

Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

Credit Against Tax

Sec. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

Certification Of State Laws.

Sec. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time. The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provisions.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Unemployment Trust Fund.

Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund," hereinafter in this title called the "Fund." The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public

debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

* * * * * * *

Interstate Commerce.

SEC. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in

interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

Definitions.

SEC. 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

ILLINOIS UNEMPLOYMENT COMPENSATION ACT.
Ch. 48, Sec. 243, Ill. Rev. Stat., 1943

§26. LIEN CREATED UPON ASSETS OF EMPLOYER—COMMENCEMENT—LIMITATION.) (a) A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions,

interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due. In all cases where a report setting forth the amount of such contributions has been filed with the Director, no action to enforce *such lien shall be brought* after three years from the date of the filing of such report and in all other cases no action to enforce such lien shall be brought after three years from the date that the determination and assessment of the Director made pursuant to the provisions of this Act became final.

Innocent Purchaser — Recordation — Withdrawal of Notice.

(b) (1) Such lien shall be invalid only as to any innocent purchaser for value of stock in trade of any employer in the usual course of such employer's business, and shall be invalid as to any innocent purchaser for value of any of the other assets to which such lien has attached, unless notice thereof has been filed by the Director in the office of the Recorder of Deeds of the county within which the property subject to the lien is situated. The Director may, in his discretion, for good cause shown, issue a certificate of withdrawal of notice of lien filed against any employer, which certificate shall be recorded in the same manner as herein provided for the recording of notice of liens. Such withdrawal of notice of lien shall invalidate such lien as against any person acquiring any of such employers' property or any interest therein, subsequent to the recordation of the withdrawal of notice of lien, but shall not otherwise affect the validity of such lien, nor shall it prevent the

Director from re-recording notice of such lien. In the event notice of such lien is re-recorded, such notice shall be effective as against third persons only as of the date of such re-recordation.

FILING OF NOTICE—LIEN INDEX.

(2) The Recorder of Deeds of each county shall procure at the expense of the county a file labeled "Unemployment Compensation Contribution Lien Notices" and an index book labeled "Unemployment Compensation Contribution Lien Index." When a notice of any such lien is presented to him for filing, he shall file it in numerical order in the file and shall enter it alphabetically in the index. The entry shall show the name, and last known business address of the employer named in the notice, the serial number of the notice, the date and hour of filing, and the amount of contribution, interest and penalty thereon due and unpaid. When a certificate of complete or partial release of such lien issued by the Director is presented for filing in the office of the Recorder of Deeds where a notice of lien was filed, the Recorder shall permanently attach the certificate of release to the notice of lien and shall enter the certificate of release and the date in the Unemployment Compensation Contribution Lien Index on the line where the notice of lien is entered.

* * * * * *

PRIORITY OF LIEN.

(d) The lien herein created in favor of the Director shall be prior to all other liens whether general or specific, and shall be inferior only to any claim for wages filed pursuant to "An Act to protect employees and laborers in their claims for wages" approved June 15, 1887, as

amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claim, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the Recorder of Deeds as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien, the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the Recorder of Deeds as in this Act provided.

FORECLOSURE OF LIEN.

(e) In addition and as an alternative to any other remedy provided by this Act, or by the laws of the State of Illinois, the Director may enforce the lien herein created by petition in the name of the People of the State of Illinois to the Circuit Court of the county wherein the property subject to the lien is situated, praying that the lien which has attached to said property, be foreclosed and the aforesaid property be sold in the same manner as in cases of foreclosure of mortgages upon personal property in courts of record. In all such cases, it shall not be necessary that said petition describe the property to which said lien has attached and it shall be the duty of the employer against whom such petition has been filed to file in said proceedings, a full and complete schedule, under oath, of all personal property and rights thereto which he owned at the time the contributions, upon which the lien sought to be foreclosed is based, became due, or which he subsequently acquired, indicating upon such schedule the property so owned by such employer which was, or is used by such em-

ployer in connection with his trade, occupation, profession or business, and if such employer shall so fail to do after having been so ordered by the court, he may be punished as in other cases of contempt of court.

The court in which such proceedings shall be pending may issue such process, make such orders requiring the parties to appear and require such notice to be given as is, or may be made, in other civil actions and shall have the same power and jurisdiction of the parties in such matter, and the rules of practice shall be the same as in other civil cases except as is otherwise provided by this Act.

Upon sale of the aforesaid personal property, the proceeds shall be applied to the payment of the costs incurred in the proceeding; the satisfaction of such liens as have attached to said property in the order of their priority and the balance, if any, to such parties as the court shall find to be entitled thereto. The Director is hereby empowered to bid at any sale conducted pursuant to the provisions of this Act.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS, ex rel.
ROBERT L. GORDON, Director of Labor,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION.

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CHAMPLIN-SHEALY COMPANY, CHICAGO 365

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION.

Respondent, in opposing the petition of the State of Illinois for a writ of *certiorari*, in effect concedes that there is a conflict between the decision of the Supreme Court of Illinois in the instant case and the decision of the Supreme Court of Rhode Island in *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, modified 68 R. I. 358, with respect to the following substantial question:

In view of the intent of Congress, as manifested in the Social Security Act and related legislation, does Section 3466 of the Revised Statutes of the United States apply to give a claim of the United States for social security excise

taxes priority over the claim of a State for unemployment compensation contributions when such contributions are exacted under a State statute adopted in accordance with the Congressional policy evinced by the Federal Act?

Respondent, however, contends that review of this question is unnecessary in view of this Court's decision in *United States* v. *New York*, 315 U. S. 510. A plain reading of the *New York* case reveals its inapplicability to the question under consideration. The *New York* case did not involve Section 3466 of the United States Revised Statutes. It involved Section 64(a)(4) of the Bankruptcy Act[1] which places State and Federal claims on a parity. The following three issues were considered in the *New York* case: (1) Whether the claim of the United States based on Sections 801 and 802 of Title VIII of the Social Security Act was a claim for a debt rather than for taxes and thus not entitled to priority under Section 64(a)(4) of the Bankruptcy Act; (2) Whether a portion of the claim of the United States, based on Title IX of the Social Security Act, constituted a penalty rather than a tax; (3) The formula to be used in prorating the funds.

Obviously the decision in the *New York* case had no bearing on the question under consideration in the case at bar. As respondent concedes (Respondent's Brief 12), the *New York* case was expressly called to the attention of the Supreme Court of Rhode Island in the *Rivard* case (68 R. I. 362, 27 Atl. (2d) 855), and that Court held it inapplicable to the question of priority under Section 3466 of the United States Revised Statutes.

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[1] "Section 64. Debts which have priority.—a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be . . . (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof . . ." U. S. C., Title 11, § 104.

It is respectfully submitted that the conflict between the decisions of the Supreme Courts of Illinois and Rhode Island remains to be resolved by this Court.

Respondent implies that the lower court was correct in holding that under Section 602(a)(1) of the Revenue Act of 1943 no credit was allowable against Federal unemployment taxes (Respondent's Brief 5). The lower court's interpretation of Section 602(a)(1) of the Revenue Act of 1943 is clearly erroneous and is contrary to the construction placed upon such section by the Federal Government and by the Senate Committee which drafted the legislation (Petitioner's Brief 11). The error of the court below with respect to Section 602(a)(1) of the Revenue Act of 1943 has not been urged by petitioner as the issue is a moot one, since the payment of the claim of the United States for taxes under Title VIII of the Social Security Act would, if allowed, exhaust the entire funds on deposit with the Clerk of the Circuit Court (Petitioner's Brief 11).

Conclusion.

It is therefore respectfully submitted that the questions herein presented are Federal questions of substance not heretofore precisely determined by this Court; that such questions are of great importance at this particular time not only to the State of Illinois and all employers and employees therein but to all states and all employers and employees; that the conceded conflict of the Supreme Courts of Illinois and Rhode Island on the first of these issues should be passed upon and resolved by this Court; and that the decision of this Court in *United States* v. *New York*, *supra*, cited and relied upon by respondent, does not determine or control the decision of the issues herein presented.

The petition should therefore be allowed.

Respectfully submitted,

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Of Counsel.

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CHAMPLIN-SHEALY COMPANY, CHICAGO

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IN THE

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PEOPLE OF THE STATE OF ILLINOIS, ex rel.
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vs.

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Respondent.

BRIEF FOR PETITIONER.

The Opinion of the Court Below.

The order of the Circuit Court of Cook County, Illinois, was entered without an opinion (R. 18, 19). The final opinion of the Supreme Court of Illinois (R. 41-54) in this case is reported in 391 Ill. 29, 62 N. E. (2d) 537, under the name "*The People, for the use of Francis B. Murphy, Director of Labor, Appellee*, v. *Advertising Review Publishing Company, United States of America, Appellant*", as No. 28490.

Jurisdiction of This Court.

The jurisdiction of this Court is based upon the provisions of Section 237 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 937, U. S. Code, Title 28, Section 344, paragraph (b), authorizing writs of *certiorari* to be issued to the highest courts of the various states where any title, right, privilege or immunity is specially set up or claimed by either party under any statute of, or authority exercised under, the United States.

In its answer and counterclaim (R. 5), the United States, specially based its claim for a priority in the distribution of the assets of the debtor upon the provisions of Section 3466 of the Revised Statutes of the United States. The applicability of this Federal statute was raised and contested throughout every state of these proceedings (R. 12, 13, 26, 27, 43, 47, 48). The Circuit Court of Cook County, Illinois, in effect decided against the contentions of the Collector (R. 18, 19). The Supreme Court of Illinois, which is the highest court in Illinois, passed upon the applicability of said Section 3466 and specifically granted priority to the Collector thereunder (R. 41, 54).

In seeking a review by this Court two reasons for granting the writ were urged; **First**—That the Court below decided a Federal question of substance not heretofore precisely determined by this Court and in so doing expressly recognized (R. 50) that its decision was in direct conflict with the decision of the highest court of a sister state (*Rivard* v. *Bijou Furniture Co.*, 68 R. I. 358); and **Second**—That the court below decided Federal questions of substance in a way probably not in accord with applicable decisions of this Court. These reasons are fully set forth in the Petition for *Certiorari* (pp. 7-9), are discussed fully in

the body of the brief and argument herein and will therefore not be discussed further at this point.

The final judgment of the Supreme Court of Illinois was rendered on September 17, 1945 (R. 41). The petition for *certiorari* was filed on January 15, 1946, time for the filing of which had been extended by order of this Court to and including January 16, 1946 (R. 56). On February 25, 1946, *certiorari* was granted by this Court (R. 57).

A companion case, *People of the State of Illinois, ex rel. Robert L. Gordon, Petitioner*, v. *Nigel D. Campbell, Collector of Internal Revenue, Respondent*, No. 750 of the current term, involving similar but not identical issues, is also before this Court, *certiorari* having been granted concurrently with the award in the instant case.

Concise Statement of The Case.

This case and the above entitled companion case present two important questions, decided in favor of the United States Government by the Supreme Court of Illinois. The first of these issues was decided adversely to the United States Government by the Supreme Court of Rhode Island in the case of *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563; 68 R. I. 358, 27 Atl. (2d) 853, in an opinion which the Supreme Court of Illinois expressly recognized as in point but declined to follow. These questions may be stated as follows:

> In view of the intent of Congress as manifested in the Social Security Act and related legislation, does section 3466 of the Revised Statutes of the United States (Appendix, *infra*,) apply to give a claim of the United States for Social Security excise taxes and capital stock taxes a priority over the claim of a state for Unemployment Compensation contributions when

such unemployment compensation contributions are exacted under a state statute adopted in accordance with the Congressional policy evinced by the Federal Act?

Was the claim of the State of Illinois for Unemployment Compensation contributions a secured claim and consequently entitled to priority over the unsecured claim of the United States for Social Security Excise taxes and capital stock taxes?

These questions emerge from facts which are not in dispute and are briefly stated as follows:

On January 9, 1939, the Advertising Review Publishing Company, a corporation, made an assignment for the benefit of its creditors to William Fisher, Trustee, who reduced the assets of the corporation to cash (R. 1-2). The Collector of Internal Revenue filed claims with the Trustee for capital stock taxes in the sum of $58.73, plus interest, taxes under Title VIII of the Social Security Act in the sum of $1,065.52, plus interest, and taxes under Title IX of the Social Security Act in the sum of $1,284.36, plus interest. The Director of Labor of the State of Illinois filed a claim for unemployment compensation contributions in the sum of $721.29, plus interest at the rate of one per cent a month (R. 2-3).

On February 11, 1942 the Trustee filed a complaint in interpleader in the Circuit Court of Cook County, Illinois, setting out the foregoing facts and requesting instructions from the Court as to the distribution of the funds in his hands. The Director of Labor and the Collector of Internal Revenue were made defendants (R. 1-4). By stipulation, the United States was made a party defendant and the Collector of Internal Revenue was dismissed (R. 4-5).

The United States filed its answer to the complaint of the Trustee and alleged that its tax claims were entitled to priority of payment under Section 3466 of the United States Revised Statutes (R. 6, 8). On April 2, 1943, the Director of Labor filed a complaint in the Circuit Court of Cook County, Illinois, to foreclose his statutory lien for unemployment compensation contributions. The allegations of the complaint may be summarized as follows:

The Advertising Review Publishing Company, a corporation, hereinafter referred to as the debtor, was an employer, subject to the Illinois Unemployment Compensation Act (R. 8-9). It became indebted to the Director of Labor in the sum of $1,054.91 for contributions and interest due under the Act (R. 10). It admitted its indebtedness to the Director, and its liability for the said contributions and the amount thereof were based upon reports it had filed with the Director of Labor (R. 10). Section 26(a) of the Illinois Unemployment Compensation Act created a lien in favor of the Director for a sum equal to the amount of contributions, interest and penalties due from the said debtor. Such lien attached to the personal property or rights used by the debtor in connection with its business (R. 10-11). Notice of the said lien was filed by the Director on March 23, 1943 in the Office of the Recorder of Deeds, Cook County, Illinois (R. 11, 15, 16). The Director contended that his lien was paramount to the claims of the United States (R. 12-13).[1]

The two cases were consolidated in the Circuit Court of Cook County, Illinois (R. 16). By order of said Court the funds in the hands of the Trustee, amounting to $1,010.81, were deposited with the Clerk of the Circuit Court of Cook

[1] The provisions of the Illinois Unemployment Compensation Act relating to the lien of the Director are set forth in the Appendix *infra*, pp. 35-39.

County, Illinois (R. 19). The Court later entered an order that the lien of the Director be given priority to the extent of 90 per cent of the funds on deposit with the Clerk of the Circuit Court and that the United States have priority as to the ten per cent remaining (R. 19).

In the Supreme Court of Illinois, because of the similarity of certain issues, the case at bar was consolidated for opinion with the companion case of *The People, For the Use of Francis B. Murphy, Director of Labor, Appellee,* v. *Chicago Waste & Textile Company, et rel., Carter H. Harrison, Collector of Internal Revenue, Appellant,* No. 28490 (R. 21, 41) now before this Court under the style "*People of the State of Illinois, ex rel. Robert L. Gordon, Director of Labor, Petitioner,* v. *Nigel D. Campbell, Collector of Internal Revenue, Respondent,* No. 750 of the current term. Since the facts in the two cases are dissimilar and the case at bar has additional issues, separate petitions were submitted to this Court and separate briefs are being filed.

In its opinion of May 23, 1945, the Supreme Court of Illinois denied petitioner's contentions and held that the claim of the United States was entitled to priority over the claim of the Director (R. 21-33). A petition for a rehearing was denied on September 17, 1945 (R. 40), at which time a revised opinion was entered which likewise held that the claim of the United States was entitled to priority over the claim of the Director (R. 41-54). In reaching this result, the Supreme Court of Illinois expressly conceded that its holding was in direct conflict with the holding of the Supreme Court of Rhode Island in *Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, 21 Atl. (2d) 563 (R. 50).

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.[2]

The Supreme Court of Illinois erred:

1. In holding that the claims of the United States were entitled to priority under Section 3466 of the United States Revised Statutes over the claim of the petitioner for unemployment compensation contributions.

2. In failing to hold that petitioner's secured claim was entitled to priority over the unsecured claims of the United States.

---

[2] The Supreme Court of Illinois also erred in its interpretation of Section 602(a) (1) of the Revenue Act of 1943 (R. 46-47). Its interpretation is contrary to that of the Federal government itself and of the Senate Committee which drafted the legislation. (Article 211 of Regulation 90 as amended by T. D. 5383, C. C. H. Unemployment Insurance Service, Vol. 1, pp. 2040-2041, 2046.) The obvious misconstruction of Section 602(a) (1) of the Revenue Act of 1943 by the court below is, however, not being urged for the following reason: Petitioner raised the issue as to the applicability of said Section 602(a) (1) in his petition for rehearing only because in its original opinion of May 23, 1945 in the case of *The People, For the Use of Francis B. Murphy, Director of Labor, Appellee,* v. *The Chicago Waste and Textile Company, et al.—(Carter H. Harrison Collector of Internal Revenue, Appellant)* No. 28474, which was consolidated for opinion with the case at bar, the Supreme Court of Illinois held that due to the provisions of Section 602(b) of the Revenue Act of 1943 the petitioner was entitled to the entire amount on deposit with the Clerk of the Circuit Court of Cook County, Illinois.

In its final opinion of September 17, 1945, the Supreme Court of Illinois held in the said companion case that Section 602(b) was only applicable as to taxes arising under Title IX of the Social Security Act and that the United States was entitled to priority under Section 3466 as to that portion of its claim for taxes arising under Title VIII of the Social Security Act. The issue as to the application and construction of said Section 602(a) (1) in the case at bar is, therefore, no longer a moot one, since the payment of the claim of the United States for taxes under Title VIII of the Social Security Act would, if allowed, exhaust the entire funds on deposit with the Clerk of the Circuit Court.

SUMMARY OF ARGUMENT.

I.

In View of the Intent of Congress as Manifested in the Social Security Act and Related Legislation, Section 3466 of the Revised Statutes Is Not Applicable to Give a Claim of the United States for Social Security Excise Taxes and Capital Stock Taxes a Priority Over the Claim of a State for Unemployment Compensation Contributions When Such Contributions Are Exacted Under a State Statute Adopted in Accordance with the Congressional Policy Evinced by the Federal Act.

United States v. *Marxen*, 307 U. S. 200, 206.

United States v. *Guaranty Trust Company of New York*, 280 U. S. 478, 485.

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Spokane County v. *United States*, 279 U. S. 80.

New York v. *Maclay*, 288 U. S. 290.

United States v. *Waddill Co.*, 323 U. S. 353.

Matter of White Plains Oil Corp., 287 N. Y. 141.

United States v. *New York*, 315 U. S. 510.

Steward Machine Company v. *Davis*, 301 U. S. 548, 586-589, 591.

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Rivard v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 385, 27 Atl. (2d) 853.

II.

The Claim of the State of Illinois for Unemployment Compensation Contributions Was a Secured Claim and Consequently Was Entitled to Priority Over the Unsecured Claim of the United States for Social Security Excise Taxes and Capital Stock Taxes.

Price v. *United States*, 269 U. S. 492, 499.
Mellon v. *Michigan Trust Co.*, 271 U. S. 236, 239.
Bixler v. *Summerfield*, 195 Ill. 147, 153.
People v. *Chicago Gas Trust Company*, 130 Ill. 268, 287.
Hooven v. *Burdette*, 153 Ill. 672, 679.
Rivard v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 385, 27 Atl. (2d) 853.

ARGUMENT.

I.

IN VIEW OF THE INTENT OF CONGRESS AS MANIFESTED IN THE SOCIAL SECURITY ACT AND RELATED LEGISLATION, SECTION 3466 OF THE REVISED STATUTES IS NOT APPLICABLE TO GIVE A CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES AND CAPITAL STOCK TAXES A PRIORITY OVER THE CLAIM OF A STATE FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS WHEN SUCH CONTRIBUTIONS ARE EXACTED UNDER A STATE STATUTE ADOPTED IN ACCORDANCE WITH THE CONGRESSIONAL POLICY EVINCED BY THE FEDERAL ACT.

This Court has repeatedly held that it will not apply Section 3466 where the concept of Federal priority is inconsistent with the intention of Congress, as manifested in a later Federal statute, and that this is so even where such other Federal statute does not in express terms waive such priority but leaves such intention to be inferred from the general provisions and purposes of such statute.

In *United States* v. *Marxen*, 307 U. S. 200, this Court held that the United States was not entitled to priority under Section 3466 on a claim transferred to it after the filing of a petition in bankruptcy, because of the general purposes of the Bankruptcy Act. This Court, at page 206, said:

> "But this principle of construction (priority to the United States) is subject to the limitation that the generality of language of the section is restricted * * * by legislative intention as shown in other statutes." (Bracketed words added.)

In *United States* v. *Guaranty Trust Company of New York*, 280 U. S. 478, this Court denied the United States priority under Section 3466 for loans due it under the Transportation Act because the intention to build up the credit standing of the railroads was inconsistent with the claimed priority. In so holding, this Court, at page 485, said:

> "To have given priority to debts due the United States pursuant to Title II, would have defeated the purpose of Congress. * * * The entire spirit of the Act makes clear the purpose that the rule leading to such consequences should not be applied."

In *Mellon* v. *Michigan Trust Company*, 271 U. S. 236, priority under Section 3466 was denied because the Federal Control Act, affecting the railroads, manifested an intention that the carriers under Federal control should be treated as before their transfer to Federal operation. In so holding, this Court, at page 240, said:

> "To permit the claimed preference, we think, would conflict with the spirit and broad purpose of the statute."

See also: *Cook County National Bank* v. *United States*, 107 U. S. 445.

This general principle is not challenged or limited by the holdings in such cases as *United States* v. *Texas*, 314 U. S. 480; *Price* v. *United States*, 269 U. S. 492; *Stripe* v. *United States*, 269 U. S. 503; *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Waddill*, 323 U. S. 353; or *Matter of White Plains Oil Corp.*, 287 N. Y. 141, cited by respondent in its brief in opposition. In none of those cases was it contended that the congress, in and by a subsequent Federal statute, had manifested its intention that, as to claims

arising under such subsequent statute, the priority provisions of Section 3466 were not to be applied.

Nor does the holding of this Court in *United States* v. *New York*, 315 U. S. 510, cited by respondent in its brief in opposition, challenge or limit this general principle. A plain reading of the *New York* case reveals its inapplicability to the question under consideration. The *New York* case did not involve Section 3466 of the United States Revised Statutes. It involved Section 64 (a) (4) of the Bankruptcy Act [1] which places State and Federal claims on a parity. The following three issues were considered in the *New York* case: (1) Whether the claim of the United States based on Sections 801 and 802 of Title VIII of the Social Security Act was a claim for a debt rather than for taxes and thus not entitled to priority under Section 64 (a) (4) of the Bankruptcy Act; (2) Whether a portion of the claim of the United States, based on Title IX of the Social Security Act, constituted a penalty rather than a tax; (3) The formula to be used in prorating the funds. Obviously the decision in the New York Case had no bearing on the question under consideration in the case at bar.

The above general legal principles being established, let us now examine the provisions of the Social Security Act and related legislation to ascertain whether in and by such statutes the Congress has manifested an intention that the provisions of Section 3466 shall not apply as between a claim of the United States for Social Security excise taxes and a claim of a State for unemployment contributions exacted under a State statute adopted in accordance with the congressional policy evinced by such Federal Act.

[1] "Section 64. Debts which have priority.—a. The debts to have priority in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and order of payment shall be . . . (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof . . ." U. S. C., Title 11, § 104.

The petitioner's claim for unemployment compensation contributions is predicated on a law which, like all other State unemployment compensation statutes, was enacted in furtherance of a paramount Federal policy. The character and origin of petitioner's claim stem from Title IX of the Social Security Act. The purpose of Title IX, as we shall show was to create a National program of unemployment insurance by inducing every State in the Union to establish a system of unemployment insurance which would meet the minimum standards imposed by Congress. Through the agency of each State, Congress sought the imposition and collection of contributions to be used in the payment of benefits to unemployed workers. Such action by the States was deemed essential in order to promote the general welfare of the Nation and to serve the fiscal needs of the Federal Treasury by relieving it of the terrific drains made upon it by unemployment relief. *Steward Machine Company* v. *Davis*, 301 U. S. 548, 586-589, 591.

Although petitioner's claim for unemployment compensation contributions has been referred to as a claim of the State, it is in reality a claim of the Nation. In its relation to the welfare of the Country and the needs of the Federal Treasury, it is, unquestionably, tantamount to a claim of the United States. That Congress deemed the raising of revenue through the States for the relief of the unemployed to be of such tremendous National importance as to bar the application of Section 3466 is incisively demonstrated by (1) the exigencies which gave rise to a National program of unemployment insurance; (2) the provisions of Titles III, VII and IX of the Social Security Act; (3) the amendments to Title IX; (4) related legislation of Congress.

1. The critical conditions which gave rise to a national program of unemployment insurance.

These exigencies have been pertinently and graphically described by this Court. In *Steward Machine Company* v. *Davis, supra,* pp. 586-588, which involved the constitutionality of Title IX, this Court declared:

> ". . . there is need to remind ourselves of facts as to the problem of unemployment . . . . During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. Often the average was more than ten million; at times a peak was attained of sixteen million or more. Disaster to the breadwinner meant disaster to dependants . . . The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare. Cf. *United States* v. *Butler*, 297 U. S. 1, 65, 66, *Helvering* v. *Davis*, decided herewith. The nation responded to the call of the distressed. Between January 1, 1933 and July 1, 1936, the states . . . incurred obligations of $689,291,802 for emergency relief; local subdivisions an additional $775,675,366. In the same period the obligations for emergency relief incurred by the national government were $2,920,307,125, or twice the obligations of states and local agencies combined.
>
> According to the President's budget message for the fiscal year 1938, the national government expended for public works and unemployment relief for the three fiscal years 1934, 1935 and 1936, the stupendous total of $8,681,000,000. The *parens patriae* has many reasons—fiscal and economic as well as social and moral—for planning to mitigate disasters that bring these bur-

dens in their train. . . . insofar as there was failure by the states to contribute relief according to the measure of their capacity, a disproportionate burden, and a mountainous one, was laid upon the resources of the Government of the nation."

In *Helvering* v. *Davis*, 301 U. S. 619, 641, which involved an attack upon the constitutionality of Titles II and VII of the Social Security Act (Old Age Benefits), this Court stated:

". . . The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. . . . Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the *Steward Machine Co. supra*, has set the doubt at rest. . . ."

The national scope of the problem of unemployment was stressed by the President of the United States in his message to Congress on June 8, 1934[2] wherein he declared: "We are compelled to employ the active interests of the Nation as a whole through government in order to encourage a greater security for each individual who composes it. . . . If, as our Constitution tells us, the Federal government was established, among other things, to promote the general welfare it is our plain duty to provide for that security upon which welfare depends. . . ."

Both branches of Congress emphasized that unemployment relief posed the most serious question for the Nation.[3]

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2 Cong. Rec. Vol. 78, Pt. 10, p. 10770.

3 Senate Report No. 628, 74th Congress, 1st Session, p. 10; House Report No. 615, 74th Congress, 1st Session, p. 7.

2. Title IX of the Social Security Act.

To cope with the problem, Congress enacted Titles III, VII and IX of the Social Security Act (*Infra* pp. 34-44) Briefly, Title IX provides that every employer (with stated exceptions) of eight or more workers is to pay an annual excise tax, measured by wages. The taxpayer, however, is allowed a credit against the Federal tax for the amount of contributions paid into an unemployment compensation fund established under a State law, said credit not to exceed 90 per cent of the Federal tax.[4] Such credit is allowable only if the State law is periodically certified by the Social Security Board to the Secretary of the Treasury as satisfying certain minimum criteria (*Infra* pp. 39-41). Among these criteria, which will shortly be considered, is the requirement that the State law provide that the contributions paid into the State fund be promptly paid over to the Secretary of the Treasury to the credit of the "Unemployment Trust Fund." The Secretary of the Treasury is directed to invest the funds (except such portion as is, in his opinion, required to meet current withdrawals) in government securities. He is directed to pay out of the fund, to any competent agency, such sums as it shall duly requisition from the amount standing to its credit. The money withdrawn from the Unemployment Trust Fund by the State agency must be used solely for the payment of unemployment compensation benefits.

The plain purpose of the credit is to build up an adequate fund through the payment of contributions into State unemployment compensation systems, thereby sustaining the National burden of unemployment and safeguarding the Federal Treasury. To the extent that taxpayers make con-

[4] The remaining 10 per cent is used in covering the costs of administering the State unemployment compensation systems. See *infra*, p. 20.

tributions to a State unemployment compensation fund, the drain upon the Federal Treasury is diminished. *Steward Machine Company* v. *Davis*, *supra*, pp. 589-591. The Federal tax and the credit are "approximate equivalents." *Steward Machine Company* v. *Davis*, *supra*, p. 591. The needs of the Federal Treasury can be cared for as well by payments of unemployment compensation contributions to the States as by payment of taxes to the United States. *Rivard, et al.* v. *Bijou Furniture Company*, 68 R. I. 358, 361, 27 Atl. (2d) 853, 855. That these principles were uppermost in the mind of Congress in extending the credit is apparent from an examination of the reports of both the Senate Finance Committee and the House Committee on Ways and Means.[5]

Moreover, Congress believed that the general welfare of the country would be better served by the payment of contributions into State unemployment compensation funds than by the payment of the tax to the Federal government. *Steward Machine Company* v. *Davis*, *supra*, p. 589.

As indicated, Title IX sets out certain criteria which the State law must satisfy before the taxpayer, who pays contributions under such a law, may avail himself of the credit. These criteria are manifestly designed to promote the fiscal policy of the Federal government by insuring that the State law under which the taxpayer makes his contributions is a genuine and workable unemployment insurance measure. If the State statute were merely masquerading as an unemployment compensation law and had been enacted to take advantage of the credit for some foreign purpose, the Federal fiscal policies which the credit is calculated to serve would be frustrated. *Steward Machine Company* v. *Davis*, *supra*, p. 593.

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[5] Senate Report No. 628, 74th Congress, 1st Session, p. 15; House Report No. 615, 74th Congress, 1st Session, p. 16.

3. Titles III and VII of the Social Security Act.

To further encourage the State to establish unemployment compensation systems, Congress, in Title III of the Social Security Act, provided for grants to cover the administrative costs of such systems (Appendix, *infra*, pp. 30-33). The funds for such grants are derived from the 10% of the Federal tax which the Government retains for the purpose of meeting the costs of administering the State unemployment compensation systems.[6] However, as in Title IX, the State unemployment compensation laws are required to meet certain minimum criteria, intended to advance the fiscal policy of the United States (Appendix, *infra*, pp. 35-37).

That Congress assumed responsibility for the successful operation of the State unemployment compensation systems is evidenced not only by the standards which it prescribed in Titles III and IX and by its supervision of the "Unemployment Trust Fund" but also by the control which it has exercised through the activities of the Social Security Board which it created under Title VII of the Social Security Act (Appendix, *infra*, pp. 37-38). Through the Social Security Board, Congress has continuously reviewed State unemployment compensation legislation

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[6] Message of the President to Congress, January 17, 1935, Cong. Rec., Vol. 79, Pt. 1, p. 546; Hearings before the Senate Committee on Finance on S. 1130, 74th Cong., 1st Session, p. 112; Report of the President's Committee on Economic Security, p. 19; House Report No. 1855, 78th Congress, 2nd Session, p. 27; P. Douglas, Social Security in the United States (1936), pp. 146-148. ". . . administrative costs, if we judge from German and English experience, are likely to equal one-ninth of the benefits or one-tenth of the total costs. See my Standards of Unemployment Insurance, pp. 122-123. It was not by accident, therefore, but rather from the very structure of unemployment insurance itself that the federal government was authorized in Title IX to retain one-tenth of the tax on payrolls instead of for example one-twentieth or, as in the federal inheritance tax two-tenths." Social Security in the United *States, supra*, footnote, p. 147.

and administration to assure conformity with Federal standards, has determined and granted the amount of funds necessary for proper administration of State unemployment compensation systems, has guided the States in improving their legislation and administration, and has engaged in research designed to analyze the character of the problem of unemployment and to serve as a basis for the revision of legislation and administrative techniques dealing with that problem.[7]

4. Amendments to Title IX of the Social Security Act.

It must be emphasized that Title IX of the Social Security Act does not establish a system of unemployment compensation. No provision is made therein for the payment of benefits to unemployed persons. By the credit provisions of Title IX and the grants for administrative purposes in Title III, the States were induced to set up unemployment compensation systems to promote the general welfare of the Nation and to serve the fiscal needs of the Federal Treasury.

The heart of the unemployment compensation program is in the benefits which are paid by the States to unemployed workers and in the contributions which are collected by the States for the payment of such benefits. Time and time again, Congress has demonstrated that it is the payment of contributions to the States which advances the fiscal purposes of the Federal government. Although the credit against the Federal tax was originally allowed only if contributions to State funds were paid within a specified period of time, Congress has repeatedly amended Title IX so as to extend the credit to taxpayers who are delinquent

[7] The Social Security Board, Eighth American Scientific Congress May 10-18, 1940.

in the payment of contributions, in order to induce them to pay their contributions to the States.[8]

5. Related Legislation.

The Social Security Act became law on August 14, 1935. The payment of Federal taxes under Title IX commenced in 1936. A number of the States did not enact their unemployment compensation laws until some time later. In the meantime, the employers in such States, who were subject to the Federal tax, paid the full amount of the tax to the National government. The intention of Congress to achieve the purposes of Title IX through the payment of contributions into State unemployment compensation systems rather than through the payment of taxes to the Federal government is strikingly revealed in its action, in which it turned over 90 per cent of the taxes collected from the foregoing employers to the State unemployment compensation systems which had been established subsequent to the initial payment of Federal taxes under Title IX.[9]

There is still further proof, if need be, of the deep concern which Congress has manifested in the maintenance and growth of State unemployment compensation funds. Congress has fully recognized that such funds would play a major role during the period of post-war readjustment and would serve as the first line of defense for the millions of workers employed in war industries who would be laid off and unemployed during industry's reconversion and readjustment to peace-time production. The Senate and the House appointed Special Committees on Post-war

[8] Section 1601, Internal Revenue Act of 1939; Section 701, Second Revenue Act of 1940; Section 701 Revenue Act of 1941; Section 602 Revenue Act of 1943.

[9] Public Act 353, Ch. 755, 50 Stat. 754; Second Deficiency Appropriation Act 1938, Ch. 681, 52 Stat. 1148.

Economic Policy and Planning, which held extensive hearings on the problem of unemployment compensation in the post-war period.[10] Interviews with representatives of important government and private agencies on post-war problems and plans disclosed that "The fear of unemployment after the war colors the thinking of all the agencies interviewed. Those concerned with the labor problems give it first rank in their planning." [11] As a result of the recommendations of the said Special Committees on Post-war Economic Policy and Planning,[12] Congress enacted legislation guaranteeing the solvency of State unemployment compensation funds.[13]

In view of the tremendous importance which Congress attached to the accumulation of unemployment compensation contributions by the States, it is inconceivable that Congress expected or desired the collection of such contributions to be impaired or jeopardized by the invocation of Section 3466. On the contrary, the legislative purposes underlying Titles III, VII and IX of the Social Security Act reflect an intention on the part of Congress to subordinate the operation of Section 3466 to the paramount interest of insuring the success of the National program of unemployment relief.

In holding that the claim of the petitioner was subordinate to the claim of the United States for taxes under

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[10] Hearings before the Special Committee on Post-war Economic Policy and Planning, United States Senate, 78th Congress, Second Session, part 3, Unemployment Compensation; Hearings before the Special Committee on Post-war Economic Policy and Planning, House of Representatives, 78th Congress, Second Session, Parts 2 and 3, Economic Problems of the Transition Period.

[11] Senate Document No. 106, 78th Congress, 1st Session, p. 79.

[12] Senate Report No. 539, part 5, 78th Congress, 2nd Session, p. 6; House Report No. 1855, 78th Congress, 2nd Session, pp. 27-28.

[13] War Mobilization and Reconversion Act (50 U. S. C. A. App. 1667); Senate Report No. 565, 79th Congress, 1st Session, p. 2.

Title VIII, the Supreme Court of Illinois looked to form, not substance, and disregarded the character and significance of petitioner's claim. In the light of what has already been said, it is unnecessary to labor the point that petitioner's claim serves a Federal purpose, that it is tantamount to a claim of the United States, and that it stems from Title IX of the Social Security Act.

Both Titles VIII and IX are parts of the same Act and are designed to effectuate a common purpose—the general welfare of the United States. ". . . the ill is all one, or at least not greatly different, whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when journey's end is near." *Helvering* v. *Davis, supra*, p. 641. Congress deemed unemployment "an even more prevalent cause of dependency than old age: in fact . . . the most serious of all hazards confronting industrial workers. . . ."[14] Obviously, Congress did not intend that a claim for unemployment compensation contributions should be subordinated to a claim for taxes for old-age security.

It is important to note that in its oral argument before this Court in *Steward Machine Company* v. *Davis, supra*, p. 559, the United States contended that in imposing and collecting contributions under their unemployment compensation laws, the States were raising revenue for the general welfare of the United States; that the framers of the Constitution contemplated three different methods of raising revenue for the general welfare of the Nation.

[14] House Report No. 615, 74th Congress, 1st Session, page 7; Senate Report No. 628, 74th Congress, 1st Session, page 10.

"The first was direct Federal taxation collected by Federal officers. The second was that the Federal government lay the tax but the collection be by the State officers. The third method is that the States raise the revenue for the general welfare of the United States."

To invoke Section 3466 on the grounds that the revenue for old-age security is raised by the Federal government, whereas the revenue for unemployment relief is raised by the States, is totally devoid of merit and utterly foreign to the spirit and purpose of the Social Security Act. The clear-cut purpose and intention of Congress to treat unemployment relief as a Federal obligation and to assume the responsibility for the success of the unemployment compensation systems initiated under Title IX of the Social Security Act is not to be defeated by the sophistry of treating a claim for unemployment compensation contributions as a State claim as distinguished from a Federal claim.

In view of the above, we submit that in and by the enactment of the Social Security Act and related legislation the Congress has clearly manifested an intention that the provisions of Section 3466 shall not apply as between a claim of the United States for Social Security excise taxes and a claim of a State for unemployment compensation contributions exacted under a State statute adopted in accordance with the congressional policy evinced in such Federal Act.

In the recent case of *Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, 21 Atl. (2d) 563, the Supreme Court of Rhode Island passed upon substantially the same situation as is involved under this portion of the case at bar. In holding that the United States was not entitled to priority under Section 3466 because such a preference would be in con-

flict with the general policy, spirit and purposes of the Social Security Act, that court, in its original opinion, at page 259, said:

> "It is clear to us that the intention of Congress in the federal act was to have the federal government guide and assist the state in a comparatively new field of legislation. It is also clear that congress deemed cooperation between the two governments indispensable for success. To permit the claimed preference by the United States would conflict with the policy, spirit and broad purposes of the federal act. In the circumstances, we believe that congress intended to exclude the indebtedness to the United States in the case before us from the scope of sec. 3466. *United States* v. *Guaranty Trust Co.*, 280 U. S. 478; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, See *United States* v. *Marxen*, 307 U. S. 200, 206. It is therefore our opinion that sec. 3466 is inapplicable in this case to the claims now under consideration."

On rehearing, the government cited four recent cases, two of which are cited in the respondent's brief in opposition in the case at bar. The Supreme Court of Rhode Island, in a modified opinion, reported in 68 R. I. 358, 27 Atl. (2d) 853, considered these cases but refused to retract such previous ruling, saying (page 362):

> "* * * it is urged that the supreme court has recently decided a case which indicates a contrary view to the one we hold. *United States* v. *New York*, No. 238, October Term, 1941, filed March 2, 1942. We have carefully read that case, and, in our opinion, it does not touch upon the precise question here. Moreover, far from being of assistance to the United States in the contention which it makes here, the court seems to entertain a view of the scope and purpose of Title IX that is not unlike what we hold. Thus on page 5, the court, speaking through Mr. Justice Byrnes, says: 'Either the state or the federal government must provide the money to meet the requirements of relief to the unemployed. By his contributions to the state, an

employer has diminished the demand upon the *financial resources of the federal government.*' (Italics ours.)

"Another case which has been decided by the supreme court since our former opinion was filed has been cited to us by the United States to show that R. S. § 3466 must be applied to the case at bar. *United States* v. *Emory*, No. 33, October Term, 1941, filed December 15, 1941. That case involved the national housing act. It was contended in that case, among other contentions, that because of the objectives and provisions of that act, congress must have impliedly intended to surrender the priority accorded to the United States under R. S. § 3466. The court rejected this contention but was closely divided.

"Apparently the court divided on the question whether the national housing act ought to be given the same construction with reference to R. S. § 3466 as was given to the national banking act in *Cook County National Bank* v. *United States*, 107 U. S. 445, and to the transportation act of 1920 in *United States* v. *Guaranty Trust Co.*, 280 U. S. 478. In each of those cases it was held that § 3466 was inapplicable because, from the nature of the legislation, congress impliedly intended that the United States should have no priority under that section. The majority in the *Emory* case felt that such intention could not reasonably be found in the national housing act.

"In the case at bar we are concerned with an act which differs widely from the national housing act. That act contains no comparable provisions to Titles VIII and IX of the social security act. The fiscal provisions of both of those titles, as well as the co-operative feature of Title IX, especially distinguish the social security act from the national housing act. Therefore, we do not think that the construction of that act in the *Emory* case is either a precedent or a safe guide for the construction of the social security act in the case at bar.

"The United States has also cited two other very recent cases which, it urges, lend some support to its contention, although neither involved the precise ques-

tion here. *United States* v. *Texas*, U. S. Supreme Court, October Term, 1941, filed December 22, 1941, and *Matter of White Plains Oil Corp.*, N. Y. Court of Appeals, November 27, 1941. We have read each of those cases and we do not think either one assists the United States under the facts of the instant case."

We therefore submit that in view of the intent of Congress as manifested in the Social Security Act and related legislation, Section 3466 of the Revised Statutes is not applicable to give a claim of the United States for Social Security excise taxes and capital stock taxes a priority over the claim of a State for unemployment compensation contributions when such contributions are exacted under a State statute adopted in accordance with the congressional policy evinced in the Federal act.

II.

THE CLAIM OF THE STATE OF ILLINOIS FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS WAS A SECURED CLAIM AND CONSEQUENTLY WAS ENTITLED TO PRIORITY OVER THE UNSECURED CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES AND CAPITAL STOCK TAXES.

The foregoing arguments demonstrate that the United States is not entitled to priority under the provisions of Section 3466 of the Revised Statutes. It is a well established rule that the priority of the United States, if any there be, must rest upon a specific statutory provision, and does not obtain merely by virtue of its sovereign prerogatives. *Price* v. *United States*, 269 U. S. 492, 499; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 239.

In the case at bar, the State of Illinois, through its Director of Labor, had secured a lien under the provisions of Section 26 (a) of the Unemployment Compensation Act of Illinois (Ill. Rev. Stats., 1943, Ch. 48, Par. 243), which, in pertinent part, provides as follows:

> "A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

The debtor was an employer under this statute and the Director's claim against the debtor thereunder was fixed and determined in amount and was based on returns filed by the debtor with the Director (R. 10).

Under this statute, the Director's claim was secured by a lien which had attached to all of the personal property used by the debtor in connection with its business. The debtor was a corporation and could only own such personal property as was appropriate to the transaction of its business. Ch. 32, Sec. 157.5 (d), Ill. Rev. Stat., 1943; *Bixler* v. *Summerfield*, 195 Ill. 147, 153; *People* v. *Chicago Gas Trust Company*, 130 Ill. 268, 287. In the absence of any evidence to the contrary it is, of course, to be presumed that the personal property which the debtor transferred to the trustee was property which the debtor had used in connection with its business and was therefore subject to the State's lien for unemployment contributions. The rule is well settled that

the trustee took such property subject to the lien of the petitioner, *Hooven* v. *Burdette*, 153 Ill. 672, 679.

It is therefore submitted that the claim of the State of Illinois for unemployment contributions was secured by a lien upon the personal property which the debtor turned over to the trustee and that this lien attaches to the funds derived by the trustee from the sale of such property.

In the case at bar the United States does not contend, nor is there evidence in the record to indicate that its claims were secured by a lien.

In *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 385, 27 Atl. (2d), the Supreme Court of Rhode Island held that the claims of the state for unemployment compensation contributions and the claim of the United States for federal insurance contributions and capital stock taxes were entitled to parity. However, the court there specifically noted in its opinion that no liens were involved (67 R. I. 253, 21 Atl. (2d) 565). In that respect that case is distinguishable from the case at bar and is therefore not applicable to the issue here presented.

In view of the above, it is submitted that the claim of the State of Illinois for unemployment compensation contributions was a secured claim and consequently was entitled to priority over the unsecured claim of the United States for Social Security excise taxes and capital stock taxes.

CONCLUSION.

In view of the foregoing, it is respectfully submitted (1) that Section 3466 of the Revised Statutes is not applicable to give the claim of the United States for Social Security excise taxes and capital stock taxes a priority over the claim of the State of Illinois for unemployment compensation contributions exacted under an Illinois statute adopted in accordance with the congressional policy evinced in the Social Security Act and related legislation, and (2) that the claim of the State of Illinois for unemployment compensation contributions was a secured claim and was consequently entitled to priority over the unsecured claim of the United States for Social Security excise taxes and capital stock taxes.

Petitioner therefore prays that the said final judgment, opinion and decision of the Supreme Court of Illinois be reversed, with such further orders as may be deemed appropriate.

Respectfully submitted,

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APPENDIX.

SECTION 3466 OF THE REVISED STATUTES OF THE UNITED STATES.

(31 U. S. C. A. 191.)

Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

THE SOCIAL SECURITY ACT.

Ch. 531, 49 Stat. 620.

* * * * * * *

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION.

Appropriation.

Section 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

Payments to States.

Sec. 302(a). The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws.

Sec. 303 (a). The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably

calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

* * * * * * *

TITLE VII—SOCIAL SECURITY BOARD

Establishment.

SECTION 701. There is hereby established a Social Security Board (in this Act referred to as the "Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of $10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of

four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

Duties of Social Security Board.

Sec. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

Expenses of the Board.

Section 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

Reports.

Sec. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

* * * * * * *

TITLE IX—TAX ON EMPLOYERS OF EIGHT OR MORE.

Imposition of Tax.

SECTION 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

Credit Against Tax.

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

Certification of State Laws.

Sec. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time. The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provisions.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Unemployment Trust Fund.

Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund," hereinafter in this title called the "Fund." The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judg-

ment, required to meet current withdrawals. Such investments may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other that such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book

account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

* * * * * * *

Interstate Commerce.

Sec. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

Definitions.

Sec. 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

ILLINOIS UNEMPLOYMENT COMPENSATION ACT.

Ch. 48, Sec. 243, Ill. Rev. Stat., 1943

§26. LIEN CREATED UPON ASSETS OF EMPLOYER—COMMENCEMENT—LIMITATION.) (a) A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalfies became, or shall hereafter become, due. In all cases where a report setting forth the amount of such contributions has been filed with the Director, no action to enforce such lien shall be brought after three years from the date of the filing of such report and in all other cases no action to enforce such lien shall be brought after three years from the date that the determination and assessment of the Director made pursuant to the provisions of this Act become final.

INNOCENT PURCHASER — RECORDATION — WITHDRAWAL OF NOTICE.

(b) (1) Such lien shall be invalid only as to any innocent purchaser for value of stock in trade of any employer in the usual course of such employer's business, and shall be invalid as to any innocent purchaser for value of any of the other assets to which such lien has attached, unless notice thereof has been filed by the Director in the office of the Recorder of Deeds of the county within which the property subject to the lien is situated. The Director may, in his discretion, for good cause shown, issue a certificate of withdrawal of notice of lien filed against any employer, which certificate shall be recorded in the same manner as herein provided for the recording of notice of liens. Such withdrawal of notice of lien shall invalidate such lien as against any person acquiring any of such employers' property or any interest therein, subsequent to the recordation of the withdrawal of notice of lien, but shall not otherwise affect the validity of such lien, nor shall it prevent the Director from re-recording notice of such lien. In the event notice of such lien is re-recorded, such notice shall be effective as against third persons only as of the date of such re-recordation.

FILING OF NOTICE—LIEN INDEX

(2) The Recorder of Deeds of each county shall procure at the expense of the county a file labeled "Unemployment Compensation Contribution Lien Notices" and an index book labeled "Unemployment Compensation Contribution Lien Index." When a notice of any such lien is presented to him for filing, he shall file it in numerical order in the file and shall enter it alphabetically in the index. The entry

shall show the name, and last known business address of the employer named in the notice, the serial number of the notice, the date and hour of filing, and the amount of contribution, interest and penalty thereon due and unpaid. When a certificate of complete or partial release of such lien issued by the Director is presented for filing in the office of the Recorder of Deeds where a notice of lien was filed, the Recorder shall permanently attach the certificate of release to the notice of lien and shall enter the certificate of release and the date in the Unemployment Compensation Contribution Lien Index on the line where the notice of lien is entered.

* * * * * *

PRIORITY OF LIEN.

(d) The lien herein created in favor of the Director shall be prior to all other liens whether general or specific, and shall be inferior only to any claim for wages filed pursuant to "An Act to protect employees and laborers in their claims for wages" approved June 15, 1887, as amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claim, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the Recorder of Deeds as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien, the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the Recorder of Deeds as in this Act provided.

FORECLOSURE OF LIEN.

(e) In addition and as an alternative to any other remedy provided by this Act, or by the laws of the State of Illinois, the Director may enforce the lien herein created by petition in the name of the People of the State of Illinois to the Circuit Court of the county wherein the property subject to the lien is situated, praying that the lien which has attached to said property be foreclosed and the aforesaid property be sold in the same manner as in cases of foreclosure of mortgages upon personal property in courts of record. In all such cases, it shall not be necessary that said petition described the property to which said lien has attached and it shall be the duty of the employer against whom such petition has been filed to file in said proceedings, a full and complete schedule, under oath, of all personal property and rights thereto which he owned at the time the contributions, upon which the lien sought to be foreclosed is based, became due, or which he subsequently acquired, indicating upon such schedule the property so owned by such employer which was, or is used by such employer in connection with his trade, occupation, profession or business, and if such employer shall so fail to do after having been so ordered by the court, he may be punished as in other cases of contempt of court.

The court in which such proceedings shall be pending may issue such process, make such orders requiring the parties to appear and require such notice to be given as is, or may be made, in other civil actions and shall have the same power and jurisdiction of the parties in such matter, and the rules of practice shall be the same as in other civil cases except as is otherwise provided by this Act.

Upon sale of the aforesaid personal property, the proceeds shall be applied to the payment of the costs incurred in the proceeding; the satisfaction of such liens as have attached to said property in the order of their priority and the balance, if any, to such parties as the Court shall find to be entitled thereto. The Director is hereby empowered to bid at any sale conducted pursuant to the provisions of this Act.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS ex rel.
ROBERT E. GORDON, Director of Labor,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

REPLY BRIEF FOR PETITIONER

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vs.

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Respondent.

REPLY BRIEF FOR PETITIONER.

I.

Since respondent's argument under Point I seems to be based in large measure upon an erroneous conception of the extent and nature of our contention under Point I, we desire, at the very outset of this reply, to make clear exactly what we do and do not contend under this issue.

We do *not*, as respondent erroneously states, contend that the United States is not entitled to priority for "Social Security" taxes because

> "such taxes were not intended by Congress to be included within the scope of Section 3466."

Nor do we, as respondent seems to assume, contend that Federal taxes under Titles VIII and IX of the Social Security Act and Federal capital stock taxes are not debts due the United States within the scope of Section 3466.

What we *do* contend is that the Congress by the enactment of the Social Security Act and related legislation has manifested an intention that the priority of the United States under Section 3466 *shall not apply as against claims of the States for unemployment compensation contributions* exacted under State statutes adopted in accordance with the congressional policy evinced in the Federal statute.

Consequently we also concede respondent argument that such taxes are, under Section 3466, entitled to priority over the claims of all private persons and of the State and local government for all taxes *other* than those arising under unemployment compensation acts (provided, of course, that the debtor is insolvent within the meaning of Section 3466 and that such claims are not secured).

Nor do we contend, as respondent infers, that the State's claim for unemployment compensation contributions is, by virtue of the provisions of the Social Security Act and related legislation, somehow transformed into a Federal claim and therefore entitled to the priority accorded the United States under Section 3466. As we have said, our argument is limited to the narrow contention that, *as against a State's claim for unemployment compensation contributions and that type of claim only*, Section 3466 is not applicable to give the United States priority.

Thus, most of respondent's argument under Point I, which sets up a "straw man" and then proceeds to knock him down, is irrelevant and not responsive to the narrower issue here presented.

In answer to our contention that Congress by enacting the Social Security Act and related legislation has manifested an intention that the priority of the United States under Section 3466 shall not apply as against claims by the States for unemployment compensation contributions, respondent points out that Section 807(c) of the Social Security Act with respect to Title VIII taxes, provides that:

> "All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of Section 607 of the Revenue Act of 1934, shall, *insofar as applicable and not inconsistent with the provisions of this title*, be applicable with respect to the taxes imposed by this title." (Italics added.)

Respondent also points out that a similar provision is contained in Section 905(c) of the Social Security Act with respect to Title IX taxes.

From these provisions, respondent concludes that:

> "instead of repudiating Section 3466, Congress took pains to show that the United States could invoke the section as a means of securing collection from an insolvent taxpayer of the taxes imposed by the Social Security act."

This conclusion does not follow at all. In the limitations which we have set forth in italics, viz.:

> "insofar as applicable and not inconsistent with the provisions of this title,"

Congress has specifically indicated that it realized that such provisions as Section 3466 might jeopardize the collection of contributions by the States and therefore intended to restrict the collection procedures available to the United States to such procedures as would not be

> "inconsistent with the provisions of this title."

It is also material that Congress did not expressly indicate that Section 3466 was to be available.

In this connection, it should be remembered that we are not contending that Section 3466 is not available to the United States as against claims generally, but limit our contention to the narrow proposition that Congress has manifested an intention that *as against claims of the States for unemployment compensation contributions*, this section was not to be available and that such an application of Section 3466 would, in the words of the above section, be

"inconsistent with the provisions of such title."

Respondent also reviews in considerable detail the facts and holdings of this Court in *Cook County National Bank* v. *United States*, 107 U. S. 445; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236; *United States* v. *Guaranty Trust Co.*, 280 U. S. 478; and *United States* v. *Maxwell*, 307 U. S. 200. Despite respondent's remarks to the effect that each of those cases turned on the particular provisions of the statutes involved, respondent does not seriously challenge our contention (Br. 10, 11) that these cases show that this Court has repeatedly and consistently held that it will not apply the provisions of Section 3466 where the concept of Federal priority is inconsistent with the intent of Congress, as manifested in a subsequent Federal statute, and that this is so even where such later statute does not in express terms waive such priority but leaves such intention to be derived from the general provisions and purposes of such statute.

Respondent also correctly points out that the State's argument that Section 3466 is inapplicable only against a certain class of creditors, viz.: The States (and then only for unemployment compensation contributions) impliedly recognizes that Section 3466 is applicable against all other

creditors, and points out that none of the cases cited by us involve such a situation.

That is true, but, as we see it, there is nothing inherently difficult about such a result. To have a priority against certain classes of creditors but not against others is neither unusual nor unworkable. In cases of bankruptcy, the United States shares *pro rata* with claims of the states and both have priority over other classes of claims. Nor is it more complicated than where a second class claim in bankruptcy takes priority over third and fourth class claims but not over first class claims.

The only substantial question involved in Point I is, as we state in our original brief (Br. 12), whether in and by the enactment of the Social Security Act and related legislation the Congress has manifested an intention that, *as against claims of the States for unemployment compensation taxes* exacted under State statutes adopted in accordance with the congressional policy evinced in such acts, Section 3466 was not to be applied because inconsistent with the general provisions, scope and purposes of the Social Security Act.

Respondent devotes little of its argument to the intention of Congress in that regard. As we see it, respondent does not seriously challenge our conclusions that the Congress attached *first* and *paramount consideration* to the accumulation by the States of those funds from which the unemployed of the nation were to receive benefits and thereby diminish the drain upon the Federal treasury, and considered the accumulation of the Federal funds only secondary, or, at best, on no more than on a parity; and that therefore it was inconceivable that Congress intended the collection of such contributions to be impaired or jeopardized by the invocation of Section 3466.

After all, the Federal government not only induced the States to establish such funds by giving a 90 per cent credit against the Federal tax for payments made to the States, but it finances their administration, constantly supervises their legislation and administrative procedures, has frequently waived 90 per cent of its share in order to aid the States collect such moneys, holds the States' unemployment trust funds in its own (Federal) treasury, and has recently itself guaranteed the solvency of such State funds.

What consistency would there be in impairing the solvency of such funds by the invocation of Section 3466 against the claims of the States and then to have to furnish Federal government funds in order to restore the solvency of these same funds which it had itself depleted by the invocation of Section 3466?

Respondent cites certain language from *United States* v. *Emory*, 314 U. S. 423, where this court, in holding that the National Housing Act did not show an implied intention to waive the priority of Section 3466, pointed out that that act was not intended to strengthen the *general* credit of the property owners. It should be noted that in the case at bar the Congress has even gone so far as to pledge the government's own credit to guarantee the solvency of the State unemployment trust funds, which it holds in the Federal treasury as a trust fund.

In support of its contentions, respondent cites *three* State court decisions: *Matter of White Plains Oil Corp.*, 287 N. Y. 141; *In re Ever Krisp Food Products Co.*, 307 Mich. 182; and *Lerman* v. *Lincoln Novelty Co.*, 130 N. J. Eq. 144; and the ruling of this Court in *United States* v. *Waddill Co.*, 323 U. S. 353 (Resp. Br. 7, 20-22).

In the *Matter of White Plains Oil Corp.*, *supra*, the State conceded that the United States was entitled to full

priority for such of its claim as related to Title VIII taxes and also conceded that the government was entitled to priority under Section 3466 for Title IX taxes. The only contention presented to the court relates to whether the full amount of the tax or only 10 per cent thereof was due the Federal government. Thus, the decision does not bear upon the issue presented in the case at bar.

In *Ever Krisp Food Products Co., supra,* while the State apparently did contend that Section 3466 was not applicable "in view of the congressional intent expressed in the Social Security Act" (p. 195), the Court did not discuss this contention in any way but was content to rest its decision on the ground that the State did not have a prior specific and perfected lien. Thus, that decision is not pertinent to the narrow issue here presented.

In *Lerman* v. *Lincoln Novelty Co., supra,* while the Court did hold that the United States under Section 3466 had priority over all other claimants, including a claim of the State for unemployment compensation contributions, there is not only no intimation that the State disputed the applicability of Section 3466 as against its claim, but no indication that the State even appeared in the case, the contest being only between the landlord claiming a lien, and the United States. Thus the holding of the Court has no bearing on the issue presented in this case.

In *United States* v. *Waddill, supra,* it was conceded by the State that its claim for unemployment compensation contributions was subordinate to the claims of the United States, and therefore this Court's decision, which was merely that the landlord's claim for rent was subordinate to the claims of the United States because his lien was neither specific nor perfected, is in no way pertinent to the issue here.

So far as we know, there are only *two* cases which have passed upon this issue, the case at bar (as presented in Cases 749 and 750) and the case of *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, modified in 68 R. I. 358, which supports our contentions. We submit that it applies the correct rule, which should be adopted by this Court.

II.

Since the United States predicates its answer to our second contention entirely upon the assumption that it is entitled to priority over the State's claim by virtue of Section 3466, it appears that it is willing to concede, if it be held that as against the State's claim for unemployment compensation contributions Section 3466 is not applicable, that the claim of the State of Illinois is secured (although not perfected) and as such is entitled to priority over the unsecured claim of the United States.

Respondent's remarks to the effect that the priority of the United States for capital stock taxes is not affected by the State's argument with respect to the applicability of Section 3466 to Social Security taxes, are not correct. This erroneously assumes that we contend that the government's claims for Social Security taxes are not debts due the United States within the meaning of Section 3466. As we have said under Point I of this reply, we concede that these taxes (and the capital stock taxes) are debts within the meaning of that section but contend that Congress intended that this section was not to be applied as against the claim of a State for unemployment compensation contributions and thus to impair or jeopardize the States' collection of such funds, the collection and distribution of which to unemployed persons constitutes the very heart of the Social Security program. Obviously this latter argu-

ment applies as well to capital stock taxes as to Federal claims for taxes under Titles VIII and IX of the Social Security Act.

CONCLUSION.

In view of the foregoing, we submit that the decision of the Supreme Court of Illinois is erroneous and should be reversed by this Court.

Respectfully submitted,

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ALBERT E. HALLETT,
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No. 782

Supreme Court of the United States

October Term, 1945

THE STATE OF ILLINOIS, EX REL. [illegible], DIRECTOR OF LABOR, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS, EX REL. ROBERT L. GORDON, DIRECTOR OF LABOR, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The Circuit Court of Cook County, Illinois, entered no opinion. The opinion of the Supreme Court of Illinois (R. 41–54) is reported in 391 Ill. 29.

JURISDICTION

The judgment of the Supreme Court of Illinois was rendered on September 17, 1945. (R. 41, 55.) The time for filing a petition for a writ of certiorari was extended by the Court until January 16, 1946. (R. 56.) The petition for writ of certiorari was filed January 15, 1946. The juris-

diction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the claim of the United States against the Advertising Review Publishing Company for unpaid capital stock taxes, unemployment compensation taxes, and insurance contribution taxes is entitled to priority by virtue of Section 3466, Revised Statutes, over state claims against the company for unpaid unemployment compensation contributions levied by Illinois statute.

STATUTES INVOLVED

Section 3466 of the Revised Statutes and Section 26 (a) of the Illinois Unemployment Compensation Act involved here are set forth in the Collector's brief in opposition in *People of the State of Illinois, ex rel. Robert L. Gordon, Director of Labor* v. *Nigel D. Campbell, Collector of Internal Revenue*, No. 750, this Term.

STATEMENT

On January 9, 1939, the Advertising Review Publishing Company, a corporation, made a general assignment of its assets and property to William Fisher, trustee for the benefit of its creditors. The trustee reduced the assets to cash (R. 1–2). The Collector of Internal Revenue filed claims with the trustee for capital stock taxes in the sum of $58.73, plus interest, federal in-

surance contributions taxes in the sum of $1,065.52, plus interest, and federal unemployment compensation taxes in the sum of $1,284.36 plus interest. All of these taxes accrued in years prior to the assignment. The Director of the Department of Labor of the State of Illinois also filed claims with the trustee for unemployment compensation contributions due the State of Illinois in the amount of $721.29 plus interest. (R. 2–3.)

On February 11, 1942, the trustee filed an interpleader action in the Circuit Court of Cook County, Illinois, asking instructions of the court as to the distribution of the funds in his hands. The Director of Labor and the Collector of Internal Revenue were made defendants. (R. 1–4.) By stipulation the United States was made a party defendant and the Collector of Internal Revenue was dismissed. (R. 4–5.) On April 2, 1943, the Director filed a complaint in the Circuit Court to foreclose his statutory lien for unemployment contributions under Section 26 (a) of the Illinois Unemployment Compensation Act. (R. 8–16.) Notice of this lien had been filed with the Office of the Recorder of Deeds, Cook County, on March 23, 1943. (R. 11, 15–16.)

The two cases were thereafter consolidated (R. 16) and on order of the Circuit Court, the funds in the hands of the trustee amounting to $1,010.81 were impounded with the Clerk of the Court to abide the result of the suit (R. 19).

The court later entered an order that the lien of the Director be given priority to the extent of 90 per cent of the funds on deposit with the Clerk and that the United States have priority as to the ten per cent remaining. (R. 19.) The United States appealed from this order and the Supreme Court of Illinois reversed the decree of the Circuit Court, holding that the claim of the United States was entitled to priority over the claim of the Director. (R. 25–33.) A petition for rehearing was denied on September 17, 1945. (R. 40.)

ARGUMENT

The reasons set forth in the Collector's brief in opposition in No. 750 for denying the writ of certiorari in that case apply equally here and are not repeated.

In this case the Federal Government received priority with respect to federal unemployment compensation taxes as well as federal insurance contribution taxes, whereas in No. 750 the available funds after payment of federal insurance contribution taxes were turned over to the State and credited against the federal claim for unemployment compensation taxes. Since *Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, modified in 68 R. I. 358, which petitioner asserts conflicts with the decision below, did not involve federal unemployment compensation taxes, this additional question in the present case creates no

conflict with the *Rivard* case, even if such a conflict would warrant review at this time. For the reasons set out in the brief in opposition in No. 750, we think it does not. The different result reached in this case and in No. 750 with respect to federal unemployment compensation taxes is attributable to the fact that in this case the time had expired during which a credit against federal taxes due could be claimed by reason of payments to an approved State body; in No. 750 the taxpayer could still claim the credit under the extension of time granted by Section 602 (b) of the Revenue Act of 1943. While the credit could still be claimed in No. 750, we think that fact does not justify the distinction drawn by the court, and that the federal claim should have received complete priority in both cases. (See Brief in Opposition in No. 750, pp. 10–11.) The issue of complete priority in No. 750 is not before this Court since the Federal Government filed no petition for a writ of certiorari in that case. The *Rivard* case upon which petitioner largely bases his request for certiorari not only did not involve federal unemployment compensation taxes, but the dictum of the court in that case with respect to such taxes had no apparent reference to a situation where, as here, possible claim for credit was barred.

In No. 750, the petitioner questioned the insolvency of the taxpayer and asserted that he

held a specific and perfected lien. These questions are not in controversy here.

CONCLUSION

The petition for a writ of certiorari should be denied for the reasons set forth in the Collector's brief in opposition in No. 750.

Respectfully submitted.

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FEBRUARY 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1946

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v.

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The Circuit Court of Cook County, Illinois, rendered no opinion. The opinion of the Supreme Court of Illinois (R. 41–54) is reported in 391 Ill. 29.

JURISDICTION

The judgment of the Supreme Court of Illinois was rendered on September 17, 1945. (See R. 41, 55.) The time for filing a petition for a writ of certiorari was extended by the Court until January 16, 1946. (R. 56.) The petition for a

writ of certiorari was filed January 15, 1946, and was granted February 25, 1946. (R. 56.) The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the claim of the United States against the Advertising Review Publishing Company for unpaid capital stock taxes, insurance contribution taxes, and unemployment compensation taxes, is entitled to prior payment by virtue of Section 3466 of the Revised Statutes over state claims against the company for unpaid unemployment compensation contributions levied by Illinois statute.

STATUTES INVOLVED

The statutes involved are printed in the Appendix, *infra*, pp. 35–39.

STATEMENT

The facts[1] may be stated as follows:

On January 9, 1939, the Advertising Review Publishing Company, a corporation, made a general assignment of all its property and assets to William Fisher, as trustee for the benefit of its creditors. The trustee converted the assets to

[1] The Circuit Court of Cook County made some findings of fact (R. 17–18), but they are not complete with respect to the issue before the Court. Other facts appear in the pleadings and in the opinion of the Supreme Court of Illinois.

cash, realizing the amount of $1,734.40 therefor, which has since been reduced to $1,010.81. (R. 17–18.)

The Collector of Internal Revenue filed claims with the trustee for capital stock tax and penalty for 1939 in the sum of $58.73, plus interest at 6%; for federal unemployment compensation taxes and penalties for the year 1938 in the amount of $1,284.36, together with interest at 6% from January 11, 1940; and for federal insurance contributions taxes and penalties for the period commencing October 1, 1937, and ending December 31, 1938, in a total amount of $1,065.52, with interest at 6% from January 6, 1940. (R. 2.)

The Director of Labor of the State of Illinois also filed with the trustee claims for unemployment compensation contributions due the State of Illinois for the year 1938 in the amount of $721.29, with interest at 1% per month from January 25, 1939. (R. 3.)

On February 11, 1942, the trustee filed a complaint in interpleader in the Circuit Court of Cook County, Illinois, naming the Collector of Internal Revenue and the Director of Labor as defendants and asking instructions from the Court as to the disposition of the funds in his hands. (R. 1–4.) By order entered pursuant to stipulation the United States of America was

made a party defendant and the Collector of Internal Revenue was dismissed as a party. (R. 4–5.)

On April 2, 1943, the Director of Labor filed a complaint in the Circuit Court to foreclose a statutory lien for unemployment contributions under Section 26 (a) of the Illinois Unemployment Compensation Act. (R. 8–16.) On March 23, 1943, notice of this lien had been filed with the Office of the Recorder of Deeds, Cook County, Illinois. (R. 11, 15–16.)

The two proceedings were consolidated (R. 16) and by decree dated February 18, 1944, the funds in the amount of $1,010.81, remaining in the hands of the trustee after payment of proper expenses and costs of administration, were impounded with the Clerk of the Court and the trustee was discharged (R. 17–19). By order entered February 29, 1944, the Circuit Court decided that the lien of the Director of Labor be given priority to the extent of 90% of the funds on deposit with the Clerk and that the United States have priority as to the 10% remaining. (R. 19.)

The United States appealed from this order to the Appellate Court for the First District of Illinois, and on motion of the Director, the cause was transferred to the Supreme Court of Illinois on jurisdictional grounds. (R. 19, 42.)

On May 23, 1945, the Supreme Court filed its opinion reversing the Circuit Court (R. 21–33) and rendered judgment ordering the Circuit Court to enter a decree that the United States is entitled to priority of payment to the extent of the funds on deposit and ordering distribution accordingly (R. 34).

On June 16, 1945, the Director of Labor filed a petition for rehearing, (R. 35–40.) On September 17, 1945, the Supreme Court of Illinois denied the petition for rehearing (R. 40), and at the same time filed a modified opinion (R. 41–51), which, however, did not alter its directions to the Circuit Court to enter a decree that the United States is entitled to priority to the extent of the amounts on deposit. (R. 54).[2]

SUMMARY OF ARGUMENT

I

The claims of the United States for federal insurance contributions and federal unemployment compensation taxes, unless expressly excluded by Congress from the purview of Section 3466 of the Revised Statutes, are debts due the United States within the meaning of that section. There is no

[2] Both the original and modified opinions decided not only the instant case but also that of *People for the Use of Francis B. Murphy, Director of Labor* v. *Chicago Waste & Textile Co.*, No. 28474, now pending before this Court as No. 750. The modified opinion contained changes principally relating to the latter case.

express provision in the Social Security Act, under which these tax claims arose, relinquishing the priority, accorded to debts due the United States by Section 3466, with respect to these taxes. On the contrary, Congress prescribed in the Act that all available methods of collection, of which Section 3466 is one, should apply to these taxes.

Nor is there any provision in the Social Security Act, dealing with the acquisition of independent security by the United States or the distribution of the assets of an insolvent taxpayer, which is inconsistent with Section 3466.

Nor may any intent to relinquish federal priority be implied from the fact that the federal taxes and state contributions were both imposed in connection with a program to provide a social security system. Congress has indicated no policy of permitting states to collect contributions to the detriment of the federal revenue, which Section 3466 is designed to assure.

The provision for allowance of a credit, not in excess of 90%, against the federal unemployment compensation tax equal to the amounts paid by an employer to a state as contributions under a state law does not alter the nature of the federal tax, whatever its final amount, as a tax entitled to priority under Section 3466, nor does it elevate the contributions payable to the state to the dignity of a federal claim. Moreover, since no credit

for state payments is allowable against the federal insurance contributions tax, the priority of this tax is not impaired in any event, if any inference should be drawn that the credit provision affects the priority of the federal unemployment compensation taxes.

Finally, the claim of the State for contributions is not tantamount to a claim of the United States, so as to share equally with the claims of the United States under Section 3466 in the distribution of the insolvent debtor's estate.

II

The debtor in this case was insolvent within the meaning of Section 3466 and the state had only an inchoate general lien for the amount of the contributions due it. Consequently, since the claims of the United States against the debtor for capital stock, insurance contributions, and unemployment compensation taxes are debts due the United States, these claims are, under the express language of Section 3466, to be satisfied first.

ARGUMENT

I

FEDERAL INSURANCE CONTRIBUTIONS TAXES AND FEDERAL UNEMPLOYMENT COMPENSATION TAXES ARE DEBTS WITHIN THE MEANING OF SECTION 3466 OF THE REVISED STATUTES

This case is concerned with the question whether claims of the United States for capital

stock, federal insurance contributions, and federal unemployment compensation taxes have priority under Section 3466 of the Revised Statutes (Appendix, *infra*, p. 35) over a state claim for unemployment compensation contributions. The Supreme Court of Illinois held that the claim of the United States for insurance contributions taxes ($1,065.52, plus interest) had priority under that section over the claim of the State (R. 50–51) and since this amount exceeded the entire amount of the debtor's property available for distribution ($1,010.81) (R. 18), it awarded the amount to the United States (R. 54).[3]

The State of Illinois contends that the lower court erroneously applied the priority statute to "social security" taxes on the ground that such taxes were not intended by Congress to be included within the scope of Section 3466. (Br. 10–26.) Thus, although the Supreme Court of Illinois confined itself to a decision that the United States had priority for federal insurance contributions taxes alone, the State apparently does not distinguish these taxes from federal unemployment compensation taxes. We contend that both kinds of taxes are debts within the meaning of Section 3466, and, in any event, that

[3] The opinion of the Supreme Court of Illinois did not discuss the claim of the United States for capital stock taxes in the amount of $58.73, plus interest, but it will be clear from what is said above that these taxes also are entitled to priority over the State's claim.

the contributions taxes are clearly so, as the lower court held.

The federal insurance contributions taxes are for the period commencing October 1, 1937 and ending December 31, 1938, and they arose under Title VIII of the Social Security Act of 1935.[1] Section 801 of this title (Appendix, *infra*, pp. 35–36) levied an income tax on employees equal to a percentage of wages received in employment and Section 804 (Appendix, *infra*, pp. 36–37) levied an excise tax on employers equal to a percentage of wages paid in employment. The employees' tax was required to be withheld by the employer from wages paid the employee and to be paid by the employer to the Collector of Internal Revenue. Section 802 (Appendix, *infra*, p. 36). These taxes will sometimes hereinafter be referred to as "Title VIII" taxes.

The federal unemployment compensation taxes are for the year 1938 and they arose under the provisions of Title IX of the Social Security Act.[2] Section 901 of this title (Appendix, *infra*,

[1] For 1939 and succeeding years these taxes are imposed by the Federal Insurance Contributions Act, Chapter 9, Subchapter A, Internal Revenue Code, as amended (26 U. S. C. 1400, *et seq.*); which superseded Title VIII of the Social Security Act.

[2] For 1939 and subsequent years these taxes are levied by the Federal Unemployment Tax Act, Chapter 9, Subchapter C, Internal Revenue Code, as amended (26 U. S. C. 1600, *et seq.*), which superseded Title IX of the Social Security Act.

p. 37) imposed an excise tax on employers of eight or more persons equal to a percentage of wages paid with respect to employment. Against this tax, the employer was permitted by Section 902 (Appendix, *infra*, pp. 37–38) to credit an amount, not in excess of 90% of the tax, representing the contributions "paid by him" into an unemployment compensation fund maintained by a state under a federally approved unemployment compensation law. These taxes will sometimes hereinafter be referred to as Title IX taxes.

As this Court has already held, both the Title VIII and Title IX taxes are valid taxes, both are paid into the Treasury like internal revenue collections generally and are not earmarked in any way. *Helvering* v. *Davis*, 301 U. S. 619, 635; *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 574; *United States* v. *New York*, 315 U. S. 510.

In view of this Court's decision in *United States* v. *Waddill Co.*, 323 U. S. 353, that Section 3466 applied to give the claim of the United States for federal unemployment compensation (Title IX) taxes priority over a landlord's rent lien and a claim for municipal taxes, it can not be seriously argued now that federal tax claims arising under either Title VIII or Title IX of the Social Security Act are not debts within the meaning of Section 3466.* While the Court was not asked

* Other courts also have held that federal social security taxes are entitled to be paid in full ahead of other claims

to decide whether the federal claim was superior to the claim of the State of Virginia for unemployment compensation contributions, this point being conceded, it seems apparent that the priority accorded the United States' claim under Section 3466 over other claims would necessarily extend to a state's claim for unemployment contributions (which at least was not a specific and perfected lien).[7] Clearly federal taxes could not be a "debt" within the meaning of that section so as to bar the claims of some creditors and not those of others.

Apart from the *Waddill Co.* case, however, which we think should be decisive, it is well settled that federal taxes are debts within the

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under Section 3466 of the Revised Statutes. *Matter of White Plains Oil Corp.*, 287 N. Y. 141; *In re Ever Krisp Food Products Co.*, 307 Mich. 182; *Lerman* v. *Lincoln Novelty Co.*, 130 N. J. Eq. 144; *Parks* v. *Central Door & Lbr. Co.*, 164 Ore. 363; *Contra: Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, modified, 68 R. I. 358.

[7] In this case the State of Illinois does not argue that its lien for unemployment compensation contributions was specific and perfected prior to the general assignment for the benefit of creditors, at which time the priority of the United States arose, and apparently concedes the point that it had no lien which would take precedence over the claims of the United States under Section 3466, if that section is held to apply to the claims.

[8] However, it is not conceded by the United States that a prior specific and perfected lien would defeat the priority of the United States under Section 3466. See *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Texas*, 314 U. S. 480; *United States* v. *Waddill Co.*, *supra*. In the companion case, No. 750, we argue that a prior specific lien does not divest the United States of priority under Section 3466.

meaning of Section 3466 (*Price* v. *United States*, 269 U. S. 492, 499; *Stripe* v. *United States*, 269 U. S. 503) and claims for such taxes have been accorded priority over competing state and local tax claims (*Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Texas*, 314 U. S. 480). If the conditions of Section 3466 are otherwise satisfied, as we shall show they are here, the claims of the United States for federal insurance contributions and unemployment compensation taxes (and capital stock taxes as well) fall within the direction of Section 3466 that "the debts due the United States shall be first satisfied."

Consequently, only if Congress has otherwise provided that the federal insurance contributions taxes or the unemployment compensation taxes are to be excepted from the absolute priority granted by Section 3466, can there be justification for excluding such taxes from the scope of that section. But there is nothing in the express terms of either Title VIII or Title IX of the Social Security Act which relinquishes priority as to federal taxes accruing under those titles. On the contrary, instead of showing a policy of restricting the methods by which such taxes may be collected, Congress has provided for the adoption of all available methods of collection to these taxes. Section 807 (e) of the Social Security Act (Appendix, *infra*, p. 37) provided, with respect to Title VIII taxes:

> All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title.

A similar provision with respect to unemployment compensation (Title IX) taxes (making applicable to such taxes, however, the provisions of law with respect to any tax imposed only by Section 600 of the Revenue Act of 1926, c. 27, 44 Stat. 9), appears in Section 905 (b) of the Social Security Act (Appendix, *infra*, p. 38).

Section 800 of the Revenue Act of 1926 imposes documentary stamp taxes and Section 805 (b) thereof provides—

> All internal revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this title [Title VIII—Stamp Taxes], so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, writing, parcel, package, or article named herein.

Section 600 imposes excise taxes on certain articles and while there is no special provision in connection with that section alone relating to collection procedures, Article 23 of Treasury Regula-

tions 47 (March, 1926, revision), promulgated under Section 600 and 903 of the Revenue Act of 1926, provided in part:

> In collecting the excise taxes the commissioner has the benefit of all existing internal revenue laws. * * *

And Section 1100 of the Revenue Act of 1926 provides with respect to both Sections 600 and 800—

> All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act.

Section 3466 of the Revised Statutes is plainly a law relating to the collection of taxes in the special situation of insolvency, and under the quoted provisions of the Revenue Act of 1926, that section would have been available to the United States as a collection measure in the case of excise and stamp taxes levied by Sections 600 and 800 of that Act. *Cf. United States* v. *Texas, supra;* and see *Wire Wheel Co.* v. *Fayette Bank & Trust Co.*, 30 F. 2d 318 (C. C. A. 7th), certiorari denied, 279 U. S. 873, where a claim for federal excise taxes on automobiles was held entitled to priority under Section 3466. It follows that Section 3466 is also available as a collection remedy with respect to the Title VIII and IX taxes.

Thus, instead of repudiating Section 3466, Congress took pains to show that the United States

could invoke the section as a means of securing collection from an insolvent taxpayer of the taxes imposed by the Social Security Act.* This result, of course, should also follow logically from the decisions of this Court holding that Section 3466 is to be construed liberally to effectuate its purpose of securing adequate public revenues. *United States* v. *Emory*, 314 U. S. 423, 426.

The State cites (Br. 10–11) *Cook County Nat. Bank* v. *United States*, 107 U. S. 445; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236; *United States* v. *Guaranty Tr. Co.*, 280 U. S. 478; and *United States* v. *Maxwell*, 307 U. S. 200, as authority that an implied intention to relinquish federal priority under Section 3466 may be drawn from inconsistent provisions of another statute. However, each of those decisions turned on specific provisions of the statute there under consideration, which have no counterpart in the Social Security Act, and did not involve the extraordinary claim which seems to be made here that Section 3466 is inapplicable only against a particular class of creditors; *viz.*, the States. Thus, in *Cook County Nat. Bank* v. *United States*, *supra*, involving claims against an insolvent national bank, not

* Since the State's argument is predicated entirely upon the joint interest of the Federal and State governments in the social security program, and that argument would have no application to private creditors, the State's argument implicitly recognizes that Section 3466 is applicable against all private creditors.

only did the act authorizing the formation of national banks establish the manner in which their assets were to be distributed if placed in receivership, but also the United States by statute had the right to demand and receive such security as the Secretary of the Treasury thought satisfactory for amounts deposited by the United States in national banks. In addition, for any deficiency in the security deposited to secure a bank's notes, the United States was to have a paramount lien on all its assets. In view of these provisions, the Court held that Congress intended the United States to look for security for its claims elsewhere than to Section 3466 in the case of national banks, and accordingly that Section 3466 had no application when a national bank became insolvent.

In *United States* v. *Guaranty Tr. Co.*, *supra*, the Court held that claims of the United States for loans made to carriers under the Transportation Act of 1920 were not to have priority, on two grounds: First, the purpose of the Act, which was to establish the general credit of carriers needing funds, and thus to preserve the transportation system, would be defeated by giving priority to the debts due the United States, since other persons would be reluctant to extend credit to carriers if their claims were to be subordinate to those of the United States; second, Congress gave specific evidence of its purpose not to rely upon

Section 3466 for repayment of the advances, since adequate security for the loans made by the United States was either required by law or left to the discretion of the President.

The statutory provisions under which this Court inferred that Congress did not intend Section 3466 to apply to the claims in those cases are not found in the instant case. The provisions of the Social Security Act are not designed to establish the credit of a taxpayer-debtor with the public generally, as was true of the statute under which loans were made by the United States in the *Guaranty Tr. Co.*, case, nor do they direct how the estate of an insolvent debtor liable for federal contributions or unemployment taxes is to be distributed. Neither are there provisions

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* The other two cases relied on seem entirely irrelevant to the question here. In *United States* v. *Moore*, *supra*, it was held only that Section 3466 is inapplicable to a general claim in bankruptcy transferred to the United States, or to which the United States was subrogated, after the filing of a petition in bankruptcy, because the rights of creditors are fixed as of the date of filing the petition. The case at bar involves no such question. *Mellon* v. *Michigan Trust Co.*, *supra*, involved a claim of the Director General of Railroads against an insolvent estate. The Court held that Section 3466 did not apply to give the Director's claim priority because he was subject to a statute which confined his substantive rights to those which a carrier would have had. To have permitted a preference under Section 3466 (a right which a carrier could not have) would have conflicted with the spirit and broad purpose of that statute. (P. 240.) There is, of course, no similar statute here, restricting the substantive rights of the United States.

in the Act under which the United States could provide itself with independent security for payment of such taxes. In fact, the taxing provisions of the Social Security Act are intended to operate primarily on solvent persons and there is no special provision for the case where a taxpayer becomes insolvent. Section 3466 operates solely in the latter situation. In consequence there is no basis for an inference that Congress intended to waive the priority of the United States under Section 3466 for collection of Title VIII and Title IX taxes in cases where the taxpayer has become insolvent.

The reasoning of *United States* v. *Emory*, 314 U. S. 423, confirms this conclusion. In that case a majority of this Court held that the provisions of the National Housing Act did not impliedly relinquish the priority under Section 3466, otherwise attaching to claims due under the Housing Act, even though the objective of the Act was to stimulate the building trades and increase employment. The Court said (pp. 432–433):

> The National Housing Act contains no reference to the liquidation of estates of insolvent borrowers, and consequently no direct inconsistency with Sec. 3466 is possible. The purpose of Title I was not the strengthening of the *general* credit of property owners, but the stimulation of the building trades by affording assurances to lending institutions in order to induce them

> to make loans for property improvements. No security was required of the borrowers, and the interest charge was low. Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of Sec. 3466. We think such inconsistency is wholly wanting here.

Moreover, in no case of which we are aware has this Court ever implied an intention to abandon priority under Section 3466 with respect to claims arising under a revenue statute. Indeed, it seems that only the clearest Congressional language could compel such a result in the case of a tax, since the function of Section 3466 is the assurance of the public revenue (*Spokane County* v. *United States*, 279 U. S. 80, 92; *Price* v. *United States*, 269 U. S. 492, 500; dissenting opinion in *United States* v. *Emory*, 314 U. S. 423, 434). The dissenting opinion in *United States* v. *Emory*, *supra* (p. 435), deemed it of special significance that the National Housing Act there before the Court "is not a revenue measure."

Despite the fact that there are no provisions in the Social Security Act, dealing either with the taking of security by the United States or the distribution of the assets of an insolvent taxpayer, which could be construed as inconsistent with the provisions of Section 3466, the State argues that it is incompatible with the general policy and social objectives evidenced in the Social Security

Act to give priority to federal tax claims under that Act over state claims for contributions arising under a state unemployment compensation statute. The State's claim appears to be in summary that in enacting the Social Security Act Congress deemed the accumulation of state funds for unemployment compensation to be of such paramount importance that it intended to relinquish the Section 3466 priority with respect to the federal taxes. (See Br. 12–13.) As already pointed out, only the plainest evidence of such an intention would suffice to remove the priority afforded the federal claims by Section 3466. Not only is such evidence lacking here, but on the contrary Congress has provided, see *supra*, pp. 12–14, that all available collection measures are applicable to the federal taxes.

In any case, it is not to be inferred that Congress was concerned primarily with accumulating state unemployment contributions funds at the expense of federal funds. The Social Security Act did not legislate with respect to state unemployment compensation funds alone. It set up a system for payment by the United States of old age benefits (Title II), and authorized the appropriation of amounts annually as grants to the states (whose plans conformed to the standards set up in the Act), for old age assistance (Title I), for administration of unemployment compensation laws (Title III), and in aid of dependent

children (Title IV), maternal and child welfare (Title V), public health (Title VI), and the blind (Title X).[11] Manifestly such a program required large federal funds and Congress levied the Title VIII and IX taxes to provide additional general revenue, which, when appropriated,[12] would supply funds to carry out this program. See *Helvering* v. *Davis*, *supra*; *Steward Machine Co.* v. *Davis*, *supra*. The fact that Congress deemed it in the public interest for states to accumulate unemployment compensation funds may be admitted, but it was also in the public interest to accumulate federal revenue.

In light of the need for revenue, no implication that Congress intended to abandon its long existing policy of assuring the federal revenues, by making its claims payable first from the assets of

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[11] As H. Rep. No. 615, 74th Cong., 1st Sess., p. 3 (1939-2 Cum. Bull. 600, 601), states:

> * * * [The Act] deals with four major subjects. Old-age security, unemployment compensation, security for children, and public health. These subjects are all closely related, all being concerned with major causes of dependency. Together they constitute an important step in a well-rounded, unified, long-range program for social security.

[12] As already pointed out, the amounts collected as taxes under the Act were not earmarked, but went into the general funds of the Treasury. The Act contained the authority for appropriations to be made to carry out the provisions of the Act, but separate appropriation acts were necessary. See *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 574, 577-578, 585; *Helvering* v. *Davis*, 301 U. S. 619, 635-636.

an insolvent taxpayer, arises from the fact that it encouraged the states to collect contributions for an unemployment compensation fund and that the burden on the Federal Treasury may have been lightened to some extent thereby.

Nor can the provision for allowance of a credit against the Title IX taxes be construed as a Congressional direction that the federal taxes and the state contributions shall share *pro rata* in an insolvent estate. Title IX levies a federal tax on employers in the first instance but permits a credit against this tax, up to 90%, thereof, of amounts actually paid to the state as contributions. However, until payment is made to a state, no credit is allowable and the entire federal tax is payable to the United States.[1] As this

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[1] S. Rep. No. 628, 74th Cong., 1st Sess., pp. 12-13, (1939-2 Cum. Bull. 611, 612), states with respect to the credit:

> This credit, however, is allowed only up to 90 percent of the Federal tax, 10 percent being payable into the Federal Treasury in any event.
>
> This tax offset device is modeled after the provision in the Federal estate tax law, under which a credit is allowed up to 80 percent of the Federal tax for amounts paid under State inheritance tax laws. With a uniform tax and this offset device, employers in all States will be put in an equal competitive position. No State can gain any advantage through failing to establish an unemployment compensation system. * * *

Cf. *Florida* v. *Mellon*, 273 U. S. 12, in which this Court sustained the validity of the federal estate tax and the credit provision, irrespective of whether or not the 80% credit against the federal tax for payments of state inheritance tax was or could be taken in a particular case.

Court declared in *United States* v. *New York*, 315 U.S. 510, 517:

> The amount of the tax assessable under Section 901 is definite and fixed, once the single variable, the total of the wages paid during the year, is determined. Although the employer is free to obtain a credit against it by contributing to his state fund, it cannot be said that it is any less a tax because the employer has failed, either through choice or lack of resources, to make such a contribution. Either the state or the federal government must provide the money to meet the requirements of relief to the unemployed. By his contributions to the State, an employer has diminished the demand upon the financial resources of the federal government. But by his failure to contribute, the employer has increased this demand and sharpened the necessity for obtaining the revenues required to satisfy it. The effort by the United States to obtain the revenue by denying the credit must be regarded as the levying of a tax and not as the exaction of a penalty.

Consequently, the fact that Congress provided for the reduction of Title IX taxes by the credit does not alter the nature of the tax, nor does it minimize the importance of this tax to the Federal Government as a revenue producing measure.

The provision for the credit means no more than that Congress was willing for the Federal Government to surrender such part of the amount (but not in excess of 90%) it might otherwise collect as revenue under Title IX, as was equal to the amount collected by a state under its own laws. It does not signify any intention to elevate the amounts which the state collects to the status of federal taxes, or to destroy the clear distinction between the claim of a state for contributions and that of the Federal Government for the taxes due it, which this Court recognized in *United States* v. *New York*, 315 U. S. 510. And certainly the provision for allowance of a credit against the Title IX taxes in certain circumstances does not evidence a broad purpose generally to relinquish priority as to the Title IX tax remaining due after the allowable credit is deducted, or as to the full amount of the Title VIII taxes, which are unfettered by any provision for credit of state contributions.

Furthermore, the credit is not allowed to the state but only to the employer who is liable for the federal tax. The state's right is only to collect whatever amount is due as contributions under its own law. It neither benefits from the credit nor is concerned with the allowance or amount thereof. The credit is purely a federal matter. Accordingly, the state would seem to have no standing to argue that the credit pro-

vision incorporates the contributions imposed by its own law into the federal system of taxes.

In any event, if the conclusion could be reached that Congress intended to relinquish the priority of Title IX taxes on the theory that the state contributions are in the same class because they may be credited against such taxes, the reasoning supporting such a conclusion would be inapplicable to the Title VIII taxes. These taxes are not reducible by a credit and stand entirely alone. They are provided for in a different title of the Act and were levied for a different purpose than were the Title IX taxes. *Helvering* v. *Davis*, *supra*. Any implication arising from the credit provision in the case of Title IX taxes that priority has been surrendered certainly cannot be carried over to a different kind of tax, which is not subject to the credit. Yet the State's argument must extend to a claimed waiver of federal priority with respect to Title VIII taxes. This necessarily follows because the federal claim under Title VIII is sufficiently large to exhaust all of the available funds.

If, by its assertion that the claim of the State is tantamount to a claim of the United States because it serves a federal purpose (See Br. 13, 22–23), the State means to imply that its claim has the status of a debt due the United States within Section 3466, we deny the suggestion. The claim of the State arose under one of its own

laws.[13] The United States could not enforce such a claim, and hence the claim of the State does not have the status of a debt due the United States, as do the federal taxes, for purposes of Section 3466.

Although the state contributions which were used to create an unemployment compensation fund, to be held by the Secretary of the Treasury, upon which the State could draw for compensation payments to its own citizens, may have relieved the Federal Government of appropriating amounts from its own revenue for that purpose, this circumstance does not convert the contributions collected by the State into federal taxes, nor evidence an intention on the part of Congress that the contributions are to be subject to the same collection procedures as are the federal taxes. The intention to depart so radically from the well defined distinction between federal and state taxes, and the sovereign authorities which collect them, would have to be evidenced by more than a general assertion that a common social objective underlies both. Cf. *United States* v. *New York, supra.*

[13] The Illinois Unemployment Compensation Act, effective July 1, 1937 (Laws of 1937, p. 571; Jones Illinois Statutes Annotated (1944), Secs. 45.128–45.161), pursuant to which employers of eight or more for the years 1937–1939, and employers of six or more for the year 1940 and thereafter (Sec. 2 (3)) became liable to pay "contributions" to the State at specified rates which respect to wages payable for employment.

Although this case involved the priority and allowance of claims under the Bankruptcy Act, it establishes that the claims of the United States for Title VIII and Title IX taxes and the claim of a state for contributions are separate and distinct claims. It is also implicit in that decision that the claims of the United States are to be preferred over those of the state for contributions, since the method of computing the allowable credit approved therein assumed that the United States was entitled to receive 10% of the Title IX tax actually due (rather than only 10% of the amount available for distribution), even though this resulted in the state receiving less than it would otherwise be entitled to, if the other method of computation had been followed. The contention here that the claims of the United States and the State should share equally is clearly inconsistent with the *New York* case.

Indeed the State's position is self-contradictory, for although the State argues that the state contributions are so much like the federal taxes as to preclude the application of Section 3466 to give priority to the federal taxes, yet at the same time it contends that the state contributions are sufficiently distinct from the federal taxes as to take priority over them by virtue of the lien given by State law.

Moreover, to classify the State's claim as of federal origin would seriously interfere with, and

probably definitely prevent the states from exercising their own notions of relative priorities. Some states accord higher priorities to their own real property taxes than they do to their social security taxes.[14] If the state social security taxes should be recognized as federal levies they would necessarily be accorded the same priorities as other federal taxes.

The right of the states to establish relative priorities for different kinds of their own taxes indicates the danger, inherent in the State's argument here, that a waiver of Federal priority in favor of state social security taxes may redound instead to the benefit of some other kind of state levy. Thus the Federal Government might stand aside for a state social security claim, but the money could be used instead to satisfy a different state claim which had a higher priority under state law. Cf. *Spokane County* v. *United States*, 279 U. S. 80, 91.

Our position in this case is fully supported by *Matter of White Plains Oil Corp.*, 287 N. Y. 141. There an insolvent corporation made an assignment of its assets for the benefit of creditors. The United States presented claims for federal insurance contributions taxes and unemployment taxes and the State of New York presented a claim for

[14] This is true in Illinois. *French* v. *Toman*, 375 Ill. 389, 393. Moreover, the Director's lien will be junior to other State claims which are earlier in time. Illinois Attorney General's Opinions, 1939, No. 37, pp. 135, 143.

unpaid unemployment compensation contributions. The right of the United States to full priority of payment of the insurance contributions taxes due it was not challenged (p. 143), nor did the State contend that the Title IX claim was not entitled to priority under Section 3466. It argued, however, that this claim should be allowed only for 10% of the total amount since the contributions due the state but unpaid, should be credited against the Title IX claim to the extent of 90% thereof. The New York Court of Appeals unanimously rejected this contention and held that the United States was entitled to full priority for all of the Title IX taxes due it, even though if the estate were solvent, the federal claim would be reduced to 10%, and even though by asserting the full amount of its claim nothing whatever remained for payment of the State claim.

Also, in *In re Ever Krisp Food Products Co.*, 307 Mich. 182, the court held that the claims of the United States for Title VIII and Title IX taxes and for capital stock taxes had priority under Section 3466 of the Revised Statutes over a claim for state contributions of the Michigan Unemployment Compensation Commission. Although the Commission contended that Section 3466 was inapplicable to the United States claim "in view of the congressional intent expressed in the social security act" (p. 195), the court did not discuss the contention but rested its decision on the ground that the United States had priority because the claim of the Commission was not sup-

ported by a prior specific and perfected lien. See also *Lerman* v. *Lincoln Novelty Co.*, 130 N. J. Eq. 144, in which it was held that the claim of the United States for social security tax had priority under Section 3466 over all state claims, including a claim for unemployment insurance contributions. And cf. *United States* v. *Waddill Co.*, 323 U. S. 353, in which it was conceded that the claim of the Virginia Unemployment Compensation Commission for contributions was subordinate to that of the United States for unpaid federal unemployment compensation taxes.

Rivard v. *Bijou Furniture Co.*, 67 R. I. 251, modified in 68 R. I. 358, is contrary to our position here. The lower court recognized that its decision conflicted with the *Rivard* case but declined to follow it. We believe the *Rivard* decision is erroneous for reasons already given. The conclusion was there reached that a state claim for unemployment compensation contributions was entitled to share *pro rata* with federal insurance contributions taxes and capital stock taxes, despite the provisions of Section 3466 that the federal debts are to be satisfied first. It is not clear whether the Supreme Court of Rhode Island meant to hold that Section 3466 did not apply to the federal claims at all [15] (see 67 R. I. 259, where the court said: "It is therefore our opinion that

[15] Such a holding could scarcely be made in the case of the capital stock taxes, which of course have not the remotest connection with the state contributions.

said sec. 3466 is inapplicable in this case to the claims now under consideration."), or whether, as the second opinion, 68 R. I. 358, seems to indicate, the theory of the court was that the state contributions were intended by Congress to be on a par with the federal insurance contributions taxes and other federal taxes under Section 3466.[16] But in either event, the court ordered a distribution of the insolvent estate in a way contrary to the provision by Congress. There is neither justification for ignoring Section 3466 entirely nor for amending the section by adding state claims for contributions to the class of debts having priority under Section 3466.

The decision is not in harmony with this Court's decisions in *United States* v. *Waddill Co., supra,* and *United States* v. *New York, supra,* as has been seen; and in denying priority to the federal tax claims over state claims for contributions, it conflicts with *Matter of White Plains Oil Corp.;*

[16] The court also held that the part of the federal and state claims representing employees' taxes and contributions were special trust funds held by the employer for the United States and the State, respectively, and were payable even ahead of any claims under Section 3466. In the instant case the record does not show whether any part of the federal insurance contributions tax represented employees' taxes collected by the employer, but to the extent that the claim of the United States may have covered employees' taxes, it is clear that this is payable first, since the employer held the employees' tax as a special fund in trust for the United States. See Sections 802 and 807 (c) of the Social Security Act and Section 607 of the Revenue Act of 1934 (Appendix, *infra,* pp. 36, 37, 38–39).

supra; In re Ever Krisp Food Products Co., supra; and *Lerman* v. *Lincoln Novelty Co., supra,* which we believe apply the correct rule.

It is therefore submitted that not only the claim of the United States for federal insurance contributions taxes, as the lower court held, but also its claim for federal unemployment compensation taxes as well, are debts due the United States within the meaning of Section 3466 of the Revised Statutes. The State has not argued that the claim for capital stock tax is not a debt; it is assumed that it concedes this point, since it makes no argument to the contrary. In any case, this claim, as a tax, is a debt entitled to priority under Section 3466; as the decisions of this Court cited above make plain.

II

UNDER SECTION 3466 OF THE REVISED STATUTES THE UNITED STATES IS ENTITLED TO PRIOR PAYMENT OF ITS CLAIMS FOR TAXES

The foregoing argument shows that the capital stock taxes, federal insurance contributions taxes, and federal unemployment compensation taxes owing to the United States by the Advertising Review Publishing Company are debts within the meaning of Section 3466 and, if the debtor was insolvent, the language of that section requires that these taxes are to be first satisfied out of the debtor's assets.[12]

[12] The amount available, however, is not even sufficient to satisfy the insurance contributions tax alone.

In January, 1939, the debtor here made a voluntary assignment of all its assets to a trustee for the benefit of creditors. This, of course constituted an act of insolvency within the meaning of Section 3466 (cf. *United States* v. *Waddill Co.*, 323 U. S. 353; *Bramwell* v. *U. S. Fidelity Co.*, 269 U. S. 483; *United States* v. *Oklahoma*, 261 U. S. 253) and the State makes no contention to the contrary.

Although the State relies on the lien given it by state law as entitling it to priority in the event that Section 3466 does not apply to the claims of the United States for social security taxes[18] (Br. 26–28), the State makes no contention that if Section 3466 does apply to the claims of the United States for Title VIII and Title IX taxes, as we have shown it does, its lien was specific and perfected on the date of the voluntary assignment, at which time the priority of the United States attached. Indeed, prior to the time of the assignment the State had taken no action whatever with respect to the lien given it by Section 26 (a) of the Unemployment Compensation Act of Illinois (Jones' Illinois Statutes

[18] As pointed out above, the United States also had a small claim for capital stock tax, which is not affected by the State's argument with respect to the insurance contributions and employment compensation taxes and which is a debt in any event within Section 3466. The claim for capital stock tax has priority under Section 3466, therefore, wholly without regard to whether or not priority is accorded to the federal contributions and employment taxes.

Annotated (1944), Sec. 45.154), although subsequent thereto it did institute a suit to foreclose the lien. It is well settled that an inchoate lien of this sort does not defeat the priority established in favor of the federal claims by Section 3466, as the State apparently concedes. *United States* v. *Waddill Co.*, 323 U. S. 353; *United States* v. *Texas*, 314 U. S. 480; *New York* v. *Maclay*, 288 U. S. 290; *Spokane County* v. *United States*, 279 U. S. 80.

CONCLUSION

In view of the foregoing, the judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

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MARCH 1946.

APPENDIX

Revised Statutes:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (31 U. S. C. 191.)

Social Security Act, c. 531, 49 Stat. 620:

SEC. 801. In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum. (42 U. S. C. 1001.)

SEC. 802. (a) The tax imposed by section 801 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. Every employer required so to deduct the tax is hereby made liable for the payment of such tax, and is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer. * * * (42 U. S. C. 1002.)

SEC. 804. In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(3) With respect to employment after December 31, 1948, the rate shall be 3 per centum. (42 U. S. C. 1004.)

SEC. 807. * * *

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title. (42 U. S. C. 1007.)

SEC. 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) with respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum. (42 U. S. C. 1101.)

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under

this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903. (42 U. S. C. 1102.)

SEC. 905. * * *

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. * * * (42 U. S. C. 1105.)

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 607. ENFORCEMENT OF LIABILITY FOR TAXES COLLECTED.

Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount

of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

U. S. GOVERNMENT PRINTING OFFICE: 1946

SUPREME COURT OF THE UNITED STATES.

No. 749.—October Term, 1945.

People of the State of Illinois, *ex rel.* Robert L. Gordon, Director of Labor, Petitioner,
vs.
The United States of America.

On Writ of Certiorari to the Supreme Court of the State of Illinois.

[April 22, 1946.]

Mr. Justice Black delivered the opinion of the Court.

In this case the Supreme Court of Illinois held that certain tax claims of the federal government against an insolvent taxpayer must be satisfied in full before the State of Illinois can recover amounts due as taxes under its Unemployment Compensation Act. 391 Ill. 29. This decision is substantially in conflict with that of the Supreme Court of Rhode Island in *Reynal v. Bijou Furniture Company*, 67 R. I. 251, 68 R. I. 358, and we granted certiorari to resolve this conflict.

The claim of the United States is for federal unemployment compensation taxes under Title 9 and federal insurance contributions taxes under Title 8 of the Social Security Act, 49 Stat. 620.[1] The priority claimed by the United States rests on R. S. 3466, which provides in part that "Whenever any person indebted to the United States . . . not having sufficient property to pay all his debts, makes a voluntary assignment" of his property "the debts due to the United States shall be first satisfied."

The state concedes that the facts here bring the United States' tax claims within the general priority provisions of Section 3466. The taxpayer while insolvent had made a voluntary assignment of all his property for the benefit of creditors. And it is well settled that taxes are debts within the meaning of Section 3466. *United States v. Wadill*, 323 U. S. 353, 357. The state's sole contention is that the Social Security Act evinces a Congressional purpose to free state unemployment tax claims from the general priority provisions of Section 3466.

[1] A small part of the government's claim was for capital stock taxes but this fact is of no significance here.

The state draws its inference not from an express declaration of Congressional purpose, but from what it deems to be broad implications behind the general scheme of the Social Security Act. The contention is that enforcement of priorities over state unemployment compensation tax claims would weaken state unemployment compensation funds and thus tend to frustrate the manifest purpose of Congress to foster, in the national interest, soundly financial and stable state unemployment compensation systems. The state points to the following as showing Congress' interest in state systems. Title 9 of the Social Security Act contains provisions intended to induce states to set up sound unemployment compensation in accordance with Congressionally prescribed standards. To this end state systems that meet such standards are permitted to build up their own funds by collection from employers within the state of 90% of the tax these employers would otherwise have to pay to the federal government. State funds must be paid into the United States Treasury, to be credited to a special fund, and can be withdrawn only for paying unemployment benefits. Furthermore, the federal portion of unemployment compensation taxes can be used to help states pay administrative expenses. And Congress, since passage of the original Act, has enacted legislation guaranteeing the solvency of state funds. 58 Stat. 790. All of these facts, and some others to which the state refers, are said to show that the paramount purpose of the social security legislation was to treat unemployment relief as a problem to be solved by the federal government by its assumption of the primary burden of making state systems a success.

We agree that the social security legislation provides a method for accomplishing state and federal unemployment relief systems integrated in plan, function, and purpose, and that sound state systems are essential to complete success of the Congressional plan. But we cannot agree that Congress thereby intended in effect to amend Section 3466, by making its priority provisions inapplicable to state unemployment tax claims. For while the state and federal governments were to cooperate, the underlying philosophy of the federal Act was to keep the state and federal systems separately administered. The Act nowhere indicates a purpose to treat a state unemployment claim as the state here urges us to treat its claim—"tantamount to a claim of the United States

Furthermore, Sections 807 (c) and 945 (b) of the federal Act and the provisions they incorporated by reference, made applicable to social security taxes all other provisions of law relating to the assessment and collection of other taxes unless such other remedies are inconsistent with the Social Security Act. While there is no evidence that Congress in these sections and Section 3466 specifically in mind, these provisions indicate that Congress intended, so far as practicable, to apply to social security taxes all of the remedies available to the federal government in collecting other taxes. Section 3466 provides one of these remedies. Since, as has been indicated, it is not inconsistent with other specific express language or purposes of the Social Security Act, it must be applied here.

Previous decisions of this Court relied on by the state do not support its contention. Those cases, insofar as they held that Section 3466 did not give the United States priority over certain other types of claims, dealt with laws bearing little or no resemblance to the present Act. *Cook County National Bank v. United States*, 107 U. S. 445; *United States v. Guaranty Trust Company*, 280 U. S. 47; *United States v. Emery*, 314 U. S. 423, 431-432. We find no such inconsistency here. And only the plainest inconsistency could warrant our finding an implied exception to the operation of so clear a command as that of Sec. 3466. *United States v. Emery*, *supra*, 433.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.